

Official Gazette



REPUBLIC OF THE PHILIPPINES

Edited at the Office of the President, under Commonwealth Act No. 638
Entered as second-class matter, Manila Post Office, December 26, 1905

VOL. 46

MANILA, PHILIPPINES, JULY 1950

No. 7

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THE OFFICIAL MONTH IN REVIEW

PRESIDENT Quirino on July 1, made an impassioned plea for solidarity and national unity in the face of the worsening world situation before thousands of workers, representing ten labor organizations, who marched to Malacañan to pledge their loyalty to the administration and to support its stand on the Korean crisis. "When I appeal for unity and solidarity at this time, I do not do so for myself or for my administration alone. I call upon every element of the country to pull together and work together so that the liberty we now enjoy will be enjoyed by future generations," he said.

THE resignation of Secretary of Justice Ricardo Nepomuceno was accepted "with regret" by President Quirino on July 1, to take effect, however, as soon as the Secretary has cleared his desk of several important matters. Secretary Nepomuceno urged acceptance of his resignation for reasons of health and also for "the maintenance of harmonious relations" between the President and Congress.

FOR distinguished service to the country and to humanity, gold medals were awarded to six Filipinos in a ceremony held at Malacañan Park July 3, with President Quirino pinning the medals. Recipients of the fourth annual awards were former President Sergio Osmeña for statesmanship; Eustaquio Galvez of Bigaa, Bulacan, for having raised an ideal Filipino family; Don Jaime de Veyra, for public service; Dean Francisco Benitez, for leadership in education; Dr. Maria Paz Mendoza-Guazon, for pioneering achievement in women's work; and Dr. Rebecca Parish, for instituting effective medical social services to combat infant and maternal mortality. Mrs. Josefa Jara-Martinez is the chairman of the Women's Civic Assembly under whose auspices the annual awards are given.

PRESIDENT Quirino in an address before members of the Armed Forces at Camp Murphy on July 3, reiterated his appeal for unity and solidarity "in these trying days," and urged the people to rally behind the Government in its efforts to preserve the democratic institutions of the country. The President exhorted members of the Armed Forces to instill respect and confidence among the people not with the aid of their guns but by peaceful and diplomatic means. He also lauded the Armed Forces for their excellent work in maintaining peace and order.

THE fourth anniversary of the Philippine Republic was celebrated on July 4, with the usual solemnity and color, and with President Quirino urging the people "to renew our faith in ourselves and reaffirm our loyalty to the democratic institutions which we have established," in an address to the nation at the New Luneta. "Our republic is only four years old, but it has taken more, much more, than that to make it what it is today. Behind it is half a century of experience and training for democracy. Behind it is four centuries of Christian culture. Behind it is the memory of a longer racial tradition rooted in sacrifice, courage, and self-respect. It is unthinkable that we should wantonly set all aside for any system or cause that denies all the moral and spiritual values that constitute our priceless inheritance," the Chief Executive declared. The occasion featured a display of Philippine might by the Armed Forces, and was highlighted by the lighting of the Eternal Flame on the tomb of the Filipino Unknown Soldier by the President. [See "HISTORICAL PAPERS AND DOCUMENTS" for full text of the President's Independence Day speech.]

Meanwhile, the President sent a message to President Truman felicitating the people of the United States on the anniversary of American independence, stating in part: "The fact that this same day marks the establishment of the Philippine Republic through an unprecedented act of renunciation on the part of the American people compounds our rejoicing over this simultaneous commemoration." The American President in return cabled the felicitations of the American people to the Filipinos through President Quirino. [See full text of messages under "HISTORICAL PAPERS AND DOCUMENTS" in this issue.]

PRESIDENT Quirino on July 5, appointed the following key officials of the newly-created Civilian Emergency Administration: Modesto Farolan, director of publicity and propaganda; Ildefonso Coscolluela, food administrator; Sergio Bayan, fuel and transportation administrator; Alfredo Eugenio, national air-raid warden; Felipe Cuaderno, director of communications; and Dr. Marciano Roque, director of community councils. Under the executive order creating the C.E.A., this organization will be administered by the National Emergency Commission composed of Teofilo Sison as Chairman, the undersecretaries of the different executive departments and the Commissioner of Social Welfare as members, and Miguel Y. Garcia, as Executive Secretary.

THE President on July 6, made a surprise tour of Quezon City where he inspected government housing projects, and surveyed vacant lots for probable homesites intended for squatters on government properties in Manila. He also visited the capitol site and the Novaliches dam.

The period from August 19 to September 19, 1950, was designated by the President as "Anti-Tuberculosis Month". In this connection, he authorized the Philippine Tuberculosis Society to conduct a national fund and educational campaign during the period. At the same time, he called on all citizens and residents to give generously and assist in this humanitarian campaign to keep this dreadful disease under control.

THE maximum selling prices of essential commodities were fixed in Executive Order No. 331 signed by President Quirino on July 7, on the recommendation of the Price Control Administration. The prices quoted in the executive order apply to Manila and its immediate environs only. The order took effect July 10, 1950.

On recommendation of Foreign Secretary Carlos P. Romulo, the Cabinet on July 7 voted unanimously to contribute rice, medicine and coconut products, and pledged moral support to the defenders of the Republic of South Korea. The Cabinet's action followed official notification from U.N. Secretary-General Lie informing the Philippine Government that the Security Council at its 474th meeting on June 27, 1950, adopted a resolution calling upon member nations to help the Republic of South Korea in its defense against the Communist aggressors from North Korea.

President Quirino on the same date ordered the immediate opening of new intermediate classes throughout the country after consultation with his cabinet. These classes were opened strictly on the one-teacher-one-class basis as provided in the Educational Act of 1940.

Meanwhile, President Quirino received Maj. Gen. Leland Stanford Hobbs, new U.S. military adviser to the Philippine Government, vice Maj. Gen. Jonathan Anderson, retired. Gen. Hobbs was formerly commander of the IX Corps stationed in Japan and later detailed to the office of the Chief of Staff, Far East Command, S.C.A.P. in Tokyo. The two generals were honored by the President at a state dinner at Malacañan on July 13.

The President also received Miss Joyce Maureen Brady, who delivered to him the signed copy of a prize-winning poem in a contest sponsored by the University of Nevada for the best poetic version of the heroic death of the late Chief Justice Jose Abad Santos at the hands of the Japanese kempetai in 1942. The winning poem was written by George D. Bennet, a senior student in the university. The prizes were donated by Mr. Frank W. Brady, father of Miss Brady.

THE President on July 10, appealed to all citizens to support the government bond campaign in an effort to bestir idle private capital and facilitate the rehabilitation and development of the country. He purchased Central Bank bonds worth P1,000 which he gave as presents to his two grandsons, the children of Lt. and Mrs. Tomas Quirino. Other subscribers were Jose Yulo, Pio Pedrosa, Cornelio Balmaceda, Miguel Cuaderno and Teodoro Evangelista. The bonds, in six denominations ranging from P20 to P10,000 are part of the P500,000 worth of bonds to be placed on sale. The securities are negotiable and will yield 4 per cent interest annually, free from tax.

PRESIDENT Quirino honored the 19-man American Economic Mission at a dinner in Malacañan July 11. The mission was composed of Daniel W. Bell, chairman; Maj. Gen. Richard J. Marshall, August Leroy Strand, Edward M. Bernstein, Alvin H. Cross, Michael J. Deutch, David I. Ferber, Lawrence Fleishman, Joseph B. Friedman, Wilbur A. Gallahan, William T. Hefelfinger, Richard A. Miller, Austin Nisonger, Clarence M. Purves, Louis Shere, William W. Tamplin, Donald Thompson, Carlton L. Wood, and James Parker.

THE Cabinet, in its regular session on July 11, decided:

- (1) To find a way to grant gratuities equal to at least one month salary of government employees laid off on account of the abolition of their items;
- (2) To take measures to train Filipino pilots for service in four-engine planes with the cooperation of the Philippine Air Lines;
- (3) To send 60 officers and 22 enlisted men from the Armed Forces of the Philippines to the United States under the training program of the Rehabilitation Act;
- (4) To enforce the President's previous directive dismissing all special and secret agents of the Government who are not on the regular payroll; and
- (5) To take measures to reduce the consumption of gasoline to the minimum and to help solve traffic problems in Manila.

PRESIDENT Quirino on July 12 received for the Philippine government more than P2 million worth of alien property in the Philippines which was turned over by the U.S. Government through the Alien Property Administration here. Properties transferred included 33 parcels of real estate valued at P98,018; agricultural and industrial corporation stocks with a total war value of P2,193,190; eight buildings valued at P16,300; and pulp machinery valued at P75,000. James McL. Henderson, U.S.-P.I. alien property administrator signed the transfer documents on behalf of the U.S. Government. Most of these properties were formerly owned by Japanese nationals in the country.

THE President on July 12, reiterated that the Government would interpose no objection to any local private organization desiring to volunteer its services to the United States Army and fight on the side of democracy in Korea, as long as the U. S. Army is willing to equip and train them. This statement was given to officials of the National Volunteers of the Philippines who called at Malacañan to pledge their loyalty to the President and his administration. Former N.V.P. national commander Manuel Lim headed the delegation.

PRESIDENT Quirino issued on July 13 executive order fixing the ceiling prices of all textbooks prescribed for elementary grades and high schools, both in sectarian and non-sectarian institutions throughout the country. The order was issued on the recommendation of the Price Administration Board.

Meanwhile, the President received the 16-man U.S. military survey mission to Southeast Asia headed by Maj. Gen. Graves B. Erskine. The mission was on the first leg of its fact-finding tour through five Southeast Asian countries. Ambassador Cowen accompanied the missionaries.

SECRETARY of Justice Ricardo Nepomuceno, in an opinion submitted to the cabinet July 14, sustained the right of the collector of internal revenue to examine the books of educational institutions. The opinion was sought by the cabinet in view of a petition filed by the University of Santo Tomas requesting postponement of examination of the books pending the outcome of the suit brought by said university before the Supreme Court which would serve as a test case in the enforcement of the law subjecting educational institutions to certain income taxes.

PRESIDENT Quirino's regular monthly radio chat on July 15 dwelt at length on the issues involved in the invasion of the Republic of South Korea by the North Korean war. "As a member of the United Nations, we have joined hands with other members to rally to the leadership of America in the effort to stop Red aggression there and thereby prevent it from engulfing us and the rest of the world. We have pledged economic and medical aid. Filipinos may volunteer to serve there under the United States armed forces. In this venture, we must keep our feet on the ground and appreciate our limitations. Our greatest contribution is in the maintenance of our domestic tranquility. We help contain communism in the world when we destroy its forces at home. Certainly we should be proud of our antecedents as Filipinos, of our heritage as Filipinos; for it is only as good and strong and free Filipinos that we can meet (as we have met) any emergency, and contribute to the building of a free and friendly world." [See "HISTORICAL PAPERS AND DOCUMENTS" for full text of President's radio chat.]

PRESIDENT Quirino signed an executive order on July 16 authorizing the Price Administration Board to make adjustments in the maximum prices which importers or wholesalers may charge for their goods. However, the order provided that the ceiling prices to be charged by retailers directly to the consumers will remain unchanged as fixed by the Board previously. Such adjustments are subject to the approval of the President.

THE functional regrouping of government offices and the elimination of overlapping entities will be the principal objective in the projected government reorganization, President Quirino told his Cabinet July 18. At the same meeting, the Cabinet (1) authorized Foreign Secretary Carlos P. Romulo to inform U.N. Secretary-General Trygve Lie of the scope of Philippine assistance to South Korea; (2) referred to Budget Commissioner Joven for further study the proposal to economize by selling cars now assigned to certain government officials, and granting them fixed allowances; (3) appointed Public Works Secretary Prospero Sanidad to inquire into the operation of the government-operated motor pool on Engineer Island with a view to recommending measures to improve its service; (4) noted a report from Social Welfare Commissioner Asuncion Perez to the effect that the Philippines will soon receive a new U.N.I.C.E.F. allocation amounting to more than ₱514,000.

THE merit system and efficiency in the government service must not be sacrificed in favor of political considerations, President Quirino told the Cabinet at its meeting July 21. "We should never hesitate to make appointments in favor of the more deserving who will assure more efficiency in the service, regardless of objections from political and other quarters," the President emphasized. The Cabinet also (1) ruled that government owned and/or controlled corporations will be required to pay rental for the use of government buildings; and (2) made it a policy not to create new positions or recommend new salary promotions pending the completion of the government reorganization.

MALACANAN released on July 22 the list of bills approved by the mixed Council of State and Congress committee for consideration by Congress in the special session scheduled for August 1 to 10. The bills included: (1) tax bills of the administration passed by the House and pending in the Senate (last regular session of Congress); (2) the Public Works bill; (3)

emergency appropriation for the Armed Forces of the Philippines; (4) additional appropriation for elementary classes; (5) measures to provide permanent sources for additional support of public elementary education.

THE establishment of the B.C.G. laboratory in Alabang, Rizal, is "a definite step in increasing the efficiency of our manpower so necessary in the economic development of the Philippines," the President declared at its inauguration ceremonies held July 22. The laboratory, the only one of its kind in the Far East, will manufacture anti-tuberculosis vaccine. It cost the Government P300,000.

PRESIDENT Quirino issued Proclamation No. 196 calling the Congress of the Philippines to a special session to begin at 10 o'clock in the morning of August 1, 1950. In view of the importance of the measures on the agenda, the President may personally deliver his message before Congress, Malacañan indicated.

THE President also issued Executive Order No. 336 on July 25, transferring 5,000 officers and enlisted men of the Philippine Constabulary to the Philippine Ground Forces of the Armed Forces of the Philippines, "to provide for greater concentration of military effort in suppressing lawlessness, disorder and violence in certain troubled areas of the Philippines."

To promote the security and to maintain the morale of government employees, the President announced on July 25 his policy of giving priority in the appointment of vacant positions or to new positions that may be created in the future to those who may be laid off as a result of the reorganization of the executive branch of the Government. Previously, the President declared that merit and efficiency must take precedence over political consideration in the making of appointments; that the Budget Commissioner should find means to grant immediately gratuity to laid-off personnels; and that heads of departments should give assistance to laid-off employees by helping them look for other jobs.

Social Welfare Commissioner Perez, in her semi-annual report submitted to the President, listed some major accomplishments of the United Nations International Children's Emergency Fund as follows: (1) the establishment of child feeding centers; (2) the sending of Filipino fellows abroad for specialized studies and observations in relation to U.N.I.C.E.F. programs; (3) the creation of rural health demonstration and training centers; (4) the construction of vaccine laboratories in connection with its tuberculosis control project.

THE President on July 26 issued Administrative Order No. 127 placing all Constabulary units throughout the country under the operational control of the Commanding General, Armed Forces of the Philippines. The new order which took effect immediately superseded Administrative Order No. 113, issued on April 1, 1950, giving the A.F.P. chief operational control only of P.C. forces in the Luzon area.

The Bureau of the Census and Statistics reported that the entire population of the Philippines has increased by 250,000 since the last census or a total of 19,497,700 people. The birth rate for 1949 is 21.11 per thousand, while the death rate for the same year is 9.28 per thousand. This was contained in a report of the Census Director to the President.

PRESIDENT Quirino issued on July 27 Executive Order No. 337 fixing the ceiling prices of school supplies. The price-controlled supplies include writing pads, notebooks, blackboards, erasers, chalks, ink, carbon paper, pencils, rules, and manila paper.

PRESIDENT Quirino, speaking at the loyalty rally under the auspices of the Philippine Government Employees Association held at the Rizal Memorial Stadium on July 28 said that "loyalty to the government is not loyalty to the individual members of this government. It is loyalty to the Republic. The measure of our loyalty to our heroic heritage and its blessings which we enjoy today is our readiness to take up and uphold the nation's

common cause of survival as well as victory for the forces of freedom and human decency everywhere." [See "HISTORICAL PAPERS AND DOCUMENTS" for full text of the President's extemporaneous speech in this issue.]

MALACAÑAN announced on July 29 the calling of special election to be held simultaneously with the general elections in November, 1951, to fill two existing senatorial vacancies. The decision was reached by the President to effect economy in the expenses for election. The seats to be filled are those left by the late Senator Vicente Sotto and former Senator Fernando Lopez with his election as Vice-President of the Philippines in 1949.

MEANWHILE, the President's appeal for national unity in the face of another world crisis had drawn a sympathetic response from former President Sergio Osmeña. "I cordially endorse your patriotic efforts to strengthen national unity in the emergency facing our country," the Grand Old Man of Cebu said.

MALACAÑAN announced on July 31 the award of the P18 million veteran's hospital construction project in Quezon City to Allied Technologists, Inc. The A.T.I. submitted the second lowest bid amounting to P302,700, divided as follows: (1) P231,600 for the architect-engineer service, and (2) P71,100 for optional supervision as called for in the bid. A lower bid by another company was set aside on grounds of its incapability to cope with the construction demands.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 329

CREATING A CIVILIAN EMERGENCY ADMINISTRATION, DEFINING ITS POWERS AND DUTIES AND PROVIDING FOR THE COORDINATION AND CONTROL OF CIVILIAN ORGANIZATIONS FOR THE PROTECTION OF THE CIVIL POPULATION IN EXTRAORDINARY AND EMERGENCY CONDITIONS.

WHEREAS, it is necessary and desirable that comprehensive rules and regulations be issued for the immediate adoption of measures to control and coordinate civilian participation in meeting extraordinary and emergency conditions in order to safeguard the integrity of the Philippines and to insure the tranquility of its inhabitants;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers in me vested by law, do hereby create and constitute a Civilian Emergency Administration, which shall function through and be administered by the following officials and organizations and those that may hereafter be designated:

1. The National Emergency Commission composed of the Honorable Teofilo Sison, as Chairman, the Undersecretaries of the different Executive Departments and the Commissioner of Social Welfare, as members, and Mr. Miguel Y. Garcia, as Executive Secretary. This Commission shall, subject to the approval of the President, formulate and execute policies and plans for the protection and welfare of the civil population of the Philippines in extraordinary and emergency conditions. It shall have general supervision and control over the officials and organizations as authorized herein, insofar as their duties pertain to said Administration, and shall function through (a) the Manager, Philippine National Red Cross; (b) a Director of Publicity and Propaganda; (c) a Food Administrator; (d) an Industrial Production Administrator; (e) a Fuel and Transportation Administrator; (f) a National Air Raid Warden; (g) a Director of Communications; and (h) a Director of Community Councils.

2. A Zone Emergency Committee in each Military Area composed of the Civil Affairs Officer of each Military Area as chairman and a representative of each of (a) the Manager, Philippine National Red Cross; (b) the Director of Publicity and Propaganda; (c) the Food Administrator; (d) the Industrial Production Administrator; (e) the Fuel and Transportation Administrator; (f) the National Air Raid Warden; (g) the Director of Communications; (h) the Director of Community Councils; and (i) other officials as may be designated by the Chairman, National Emergency

Commission. This Committee shall have general supervision and control over the Provincial Emergency Committee of the provinces in each military area, and shall maintain liaison and coordination between respective CEA Zones and AFP Military Areas.

3. A Provincial Emergency Committee in each province, composed of the Provincial Governor, as Chairman, and the Provincial Treasurer, the Provincial Fiscal, the District Engineer, the Division Superintendent of Schools, the Provincial Commander of Constabulary, the District Health Officer, and the Provincial Agricultural Supervisor, as members. This Committee shall have general supervision and control over the Municipal Emergency Committees.

4. A Municipal Emergency Committee in each municipality or municipal district, composed of the Municipal Mayor, as Chairman, and the Municipal Treasurer, the Principal Teacher, the Chief of Police, the Sanitary Officer, the Municipal Agricultural Inspector and a representative of the Municipal Council, as members. This Committee shall organize local units for emergency purposes in accordance with and subject to the rules and regulations to be prescribed by the National Emergency Commission. Such local units shall consist of (a) Police, Traffic Control and Guard Duty Units; (b) Air Raid Warden Units; (c) Food and Fuel Administration Unit; (d) Communications, Transportation and POL Control Units; (e) Public Welfare and Morale Unit; (f) Fire Fighting Unit; (g) Community Councils; and (h) such other units as may be authorized from time to time.

5. A City Emergency Committee in each chartered city, composed of the City Mayor, as Chairman, and the City Treasurer, the City Fiscal or Attorney, the City Engineer, the City Superintendent of Schools, the Chief of Police, the City Health Officer, the Chief of the Fire Department and a representative of the Municipal Board, as members. This Committee shall organize local units for emergency purposes as prescribed for municipalities under paragraph (4) hereof.

6. For the purpose of carrying out the objectives of this Order, the cooperation of all departments, bureaus, offices, agencies and instrumentalities of the Government is hereby enjoined and the wholehearted support of the inhabitants of the Philippines earnestly requested.

Done in the City of Manila, this 1st day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 330

CREATING THE NATIONAL SECURITY COUNCIL

Pursuant to the powers vested in me by law, I, Elpidio Quirino, President of the Philippines do hereby create

a National Security Council, which shall be composed of the President, the Vice-President, the President of the Senate, the Speaker of the House of Representatives, the Head of each Executive Department, the Chairman of the Committee on the Army, Navy and Military Pensions of the Senate, the Chairman of the National Defense Committee of the House of Representatives, Senator Eulogio Rodriguez, Congressman Arturo Tolentino, the Commanding General of the Armed Forces of the Philippines, and the Chairman of the Philippine Veterans Board. Lt. Colonel Alfonso Arellano shall serve as Secretary of the Council.

The Council shall advise the President on matters of national defense and shall make recommendations on such other subjects as the President may from time to time submit for study and consideration.

This Order supersedes Executive Order No. 40, dated January 13, 1947.

Done in the City of Manila, this 1st day of July in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 331

FIXING THE CEILING PRICES OF COMMODITIES
AND OTHER PURPOSES

By virtue of the powers vested in me by section 3 of Republic Act No. 509, entitled "An Act declaring national policy, authorizing the President of the Philippines for a limited period to fix ceiling prices of commodities and to promulgate rules and regulations regarding prices of commodities to effectuate such policy, and authorizing the appropriation of a certain sum for the purpose," and upon the recommendation of the Price Administration Board, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION. 1. The following essential commodities shall not be sold at more than the maximum selling prices for importers, wholesalers and retailers set opposite each:

FOODSTUFFS (LOCAL)

	Unit	Importer's or producer's price	Wholesale price	Retail ceiling price
SUGAR:				
Refined, packed in cellophane.....		P16.00/100#	P17.20/100#	P 0.40/k
Centrifugal, washed 99°.....		18.75/63 k	21.00/63 k	0.35/k
Centrifugal, 97° and 98°.....		15.80/63 k	17.80/63 k	0.30/k
Centrifugal, Commercial, below 97°.....		13.00/63 k	14.80/63 k	0.25/k
Refined, Packed in cellophane.....		5.25/15 k	6.00/15 k	0.45/k
MEAT FRESH:				
<i>Beef</i>				
Pure meat	kilo	2.35	2.60	3.00
Meat with bones	kilo	1.00	1.10	1.30
<i>Pork</i>				
Pure meat	kilo	2.35	2.60	3.00
Meat with bones	kilo	1.00	1.10	1.30
POULTRY AND EGGS:				
<i>Chickens (native)</i>				
Sisiw	each	0.60	0.70	0.80
Dumalaga	each	2.00	2.20	2.50
Inahin	each	2.50	2.75	3.15
Tandang	each	2.20	2.40	2.75
<i>Eggs</i>				
Duck's balut	each.....	0.15	0.20	0.25
Duck's fresh	each.....	0.11	0.13	0.15
Duck's salted	each.....	0.12	0.14	0.16
Hen's native	each.....	0.08	0.10	0.22
Leghorn	each.....	0.15	0.17	0.20
FISH:				
<i>Fresh fish</i>				
Bañgus		1.60/k	1.75/k	2.00/k
Sugpo		3.55/k	3.90/k	4.50/k
<i>All other fresh fish</i>				
First class		2.20/k	2.45/k	2.80/k
Agout	Bidbid			
Albacora	Bisugo (large)			
Alumahan	Bitilia			
Apahap	Buñguan			
Bacoco	Espada			
Bambangin	Hasahasa			
Banak	Lapulapu			
Second class		1.35/k	1.50/k	1.75/k
Alakaak	Puguita			
Asohos	Salaysalay			
Batolay	Salmon			
Biang Puti	Sapsap (malaway)			
Bisugo, small	Saramuellete			
Buan	Puguita			
Cabase (sugan)	Tamban			
Dalagang Bukid	Torcillo			
Kitang	Tulingan			
Lapad (big)	Tunsoy			
Orilos				
Third class		0.75/k	0.85/k	1.00/k
Ayugin	Loro			
Babaong	Martinico			
Buguing	Palos			
Cabasi	Pindanga			
Calaso	Sapsap (malaway, small)			
Dilis	Silinyasi			
Espada (medium)	Talimusak			
Igat				
Fourth class		0.60/k	0.70/k	0.80/k
Dalagang Bukid	Lavajita (small)			
Bilog, small	Pagui (Pinosta)			
Espada, small	Pating (Pinosta)			

	Unit	Importer's or producer's price	Wholesale price	Retail ceiling price
Gourami				
Kanduli Aranon				
(small)				
Talaguntun				
Papacol				
Sapsap (small)				
DRIED SMOKED OR PRESERVED FISH:				
Tuyo, Tunsoy.....		P1.60/k	P1.75/k	P2.00/k
Dried Dilis		1.15/k	1.30/k	1.50/k
Bagoong Alamang		0.20/k	0.25/k	0.30/k
Bagoong Dilis		0.20/k	0.25/k	1.30/k
VEGETABLE FATS:				
(Not in bulk)				
Cases 600/1 oz. pkg.....		19.00/cs.	22.00/cs.	0.05/pkg.
Cases 300/2 oz.....		19.00/cs.	22.00/cs.	0.10/pkg.
Cases 48/190 gr. cartons		11.50/cs.	12.10/cs.	0.30/ctn.
Cases 40/1/2# cartons.....		12.40/cs.	13.00/cs.	0.35/ctn.
Cases 24/1# cartons		13.30/cs.	13.90/cs.	0.60/ctn.
Tins 10#.....		5.40/tin	5.60/tin	6.00/tin
(Bulk)				
Tins 25#.....		11.90/tin	12.60/tin	—
Tins 28#.....		11.80/tin	12.50/tin	—
Tins 33#.....		15.90/tin	16.60/tin	—
Tins 50#.....		20.50/tin	21.50/tin	—
Tins 100#		40.00/tin	42.00/tin	—
MARGARINE:				
(Not in bulk)				
Cases 48/190 gr. tins		16.80/case	17.60/case	0.40/tin
Cases 36/190 gr. tins		12.70/case	13.50/case	0.40/tin
Cases 48/1/2# cartons		14.90/case	15.70/case	0.35/ctn.
Cases 36/1# cartons		21.10	21.90	0.65/ctn.
Cases 24/1# tins		14.90/cs.	15.70/cs.	0.70/tin
Cases 8/3# tins		15.70/cs.	17.00/cs.	2.40/tin
Cases 6/5# tins		18.10/cs.	19.40/cs.	3.50/tin
(Bulk)				
30# tins		16.50/tin	17.75/tin	—
EDIBLE OIL:				
Retail				
Case 24/1 pint tins.....		12.40/case	12.80/cs.	0.55/tin
(Bulk)				
Tins 17 kilos.....		14.90/tin	15.50/tin	—
CANNED FRUITS (LOCAL):				
Sliced Pineapple size 2-1/2 can (1-lb. & 14-oz.)		18.00/cs./24	19.80/cs./24	0.95/tin
Sliced Pineapple, size 2 can (1-lb. & 4-oz.)		16.10/cs./24	17.70/cs./24	0.85/tin
Sliced Pineapple, size 1-F can (9-oz.)		17.00/cs./48	18.70/cs./48	0.45/tin
Crushed Pineapple, size 2 can (1-lb. & 4-oz.)		15.20/cs./24	16.70/cs./24	0.80/tin
Crushed Pineapple, size 1-F can (9-oz.)		17.00/cs./48	18.70/cs./48	0.45/tin
Pineapple juice, size 2-can (1-lb. 2, Fl. oz.)		9.45/cs./24	10.40/cs./24	0.50/tin
Pineapple juice, 46 oz. can.....		5.45/cs./6	6.00/cs./6	1.15/tin
Pineapple Tidbits, Size 2 F can (1- lb. 4-oz.)		16.10/cs./24	17.70/cs./24	0.85/tin
BREAD:				
American Bread, Loaf (350 grams each)				
Pan de Sal:				0.25
Soft (de plancha) 3 pieces				
(28 grams each)				0.05
Tough (de suelo) 2 pieces				
(42 grams each)				0.05
FLOUR:				
American per 50 lb. bag				
1st Class				7.20
2nd Class				7.00
3rd Class				6.90
Australian per 50 lb. bag				
1st Class				7.41
2nd Class				7.21
Canadian per 50 lb. bag				
1st Class				7.41
2nd Class				7.21

FOODSTUFFS (IMPORTED)

	Unit	Importer's or producer's price	Wholesale price	Retail ceiling price
MILK:				
Evaporated (tall)		P15.25/cs./48	P16.80/cs./48	P0.40/14½ oz.
Evaporated (Baby)		15.25/cs./96	16.80/cs./96	0.20/6-oz. tin
<i>Condensed</i>				
<i>Sizes:</i>				
14-oz (Tall)		21.80/cs./48	24.00/cs./48	0.60/14-oz. tin
4-oz. (small)		19.60/cs./144	21.60/cs./144	0.20/4-oz. tin
<i>Sterilized</i>				
Bear Brand, 500 grams.....		21.80/cs./48	24.00/cs./48	0.60/tin
Bear Brand, 150 grams.....		21.80/cs./96	24.00/cs./96	0.30/tin
Milkmaid, 3390 grams.....		19.20/cs./48	21.60/cs./48	0.50/tin
Milkmaid, 165 grams		17.45/cs./96	19.20/cs./96	0.25/tin
POWDERED:				
<i>Ordinary</i>				
Clover Bloom		14.70/cs./12	16.20/cs./12	1.55/1-lb.
Darigold		14.70/cs./12	16.20/cs./12	1.55/1-lb.
Hemo		14.20/cs./12	15.60/cs./12	1.50/1-lb.
Klim		17.00/cs./12	18.60/cs./12	1.80/1-lb.
Lactogen		23.45/cs./12	25.80/cs./12	2.50/1-lb.
Lactogen		28.40/cs./6	31.25/cs./6	6.00/2½-lb.
BEVERAGES:				
Cocoa	4-oz.	7.60/24	8.35/24	0.40
Cocoa	6-1/2 oz.	11.35/24	12.50/24	0.60
Cocoa	8-oz.	14.15/24	15.60/24	0.75
Cocoa	16-oz.	11.40/12	12.60/12	1.20
Coffee Chase & Sanborn.....	1-lb.	45.50/24	50.05/24	2.40
Coffee Crescent	1-lb.	37.90	41.75	2.00
Coffee Garsco	1-lb.	32.24	35.50	1.70
Coffee Hills Bros.....	1-lb.	44.70	49.20	2.40
Coffee Maxwell House	1-lb.	45.50	50.05	2.40
Coffee S & F.....	1-lb.	33.10	36.50	1.75
Coffee Sanka	1-lb.	39.85	43.80	2.10
Coffee Mello-Cup	1-lb.	36.05	39.65	1.90
Coffee Monarch	1-lb.	44.55	48.95	2.35
Coffee (Locally prepared with/import- ed coffee beans)	1-lb.	32.30	35.45	1.70
Tea, O.P.		19.75/M 2 bags /c-1	21.75/M 2 bags /c-1	0.05
Tea Lipton's	1-lb.	137.50/50	152.50/50	3.50
		145.00/100½ lb.	160.00/100 1/2-lb.	1.82
		80.00/100½ lb.	90.00/100 1/4-lb.	1.05
MEAT CANNED OR PRESERVED:				
American Smoked Ham		4.00/k	4.40/k	5.10/k
Corned Beef		37.00/cs./48	40.80/cs./48	1.00/12-oz.tin
Frankfurters		56.70/cs./48	62.40/cs./48	1.50/12-oz.tin
Sliced Bacon		69.80/cs./48	76.80/cs./48	1.85/12-oz.
Luncheon Meat		54.55/cs./48	60.00/cs./48	1.45/12-oz.
Vienna Sausage		20.85/cs./48	22.95/cs./48	0.55/4-oz.
Pork and Beans		17.00/cs./48	18.70/cs./48	0.45/1-lb.
American Smoked Bacon		3.80/k	4.20/k	4.85/k
FISH CANNED:				
Salmon, Alaskan & American Chum..	1-lb.tin	37.10/cs./48	40.80/cs./48	1.00/lb.
Salmon, Alaskan Red Sockeye	1-lb.tin	56.70/cs./48	62.40/cs./48	1.50/1-lb.
Salmon, Pink	1-lb.tin	39.25/cs./48	43.20/cs./48	1.05/1-lb.
Salmon, Canadian	1-lb.tin	37.10/cs./48	40.80/cs./48	1.00/1-lb.
Salmon, Canadian Chum	1/2-lb.tin	34.90/cs./96	0.50/½-lb.
Sardines, with tomato Sauce, Oval ..	15-oz.	17.45/cs./48	19.20/cs./48	0.50/15-oz.
Sardines, with Natural Sauce, tall tin	15-oz.	13.10/cs./48	14.40/cs./48	0.35/15-oz.
Sardines, with tomato Sauce, Oblong	9-oz.	30.55/cs./96	33.60/96	0.40/9-oz.
BAKING POWDER				
		0.15/2-oz.	0.20/2-oz.	0.25/2-oz.
		0.20/4-oz.	0.25/4-oz.	0.30/4-oz.
		0.40/8-oz.	0.45/8-oz.	0.50/8-oz.
		2.00/5-lbs.	2.20/5-lbs.	2.60/5-lbs.
		3.70/10-lbs.	4.10/10-lbs.	4.73/10-lbs.
YEAST		1.20/10-lbs.	1.30/1-lb.	1.50/1-lb.

	Unit	Importer's or producer's price	Wholesale price	Retail ceiling price
VEGETABLES:				
<i>Fresh</i>				
Garlic		P0.95/k	P1.00/k	P1.20/k
Onions		0.50/k	0.55/k	0.65/k
Potatoes		0.40/k	0.45/	0.55/k
DAIRY PRODUCTS:				
Chesse, Certified American Leaf.....		5.50/5-lb.	6.00/5-lb.	6.95/5-lb.
Cheese, Triplet		1.20/1-lb.	1.30/1-lb.	1.45/1-lb.
Cheese, Processed		0.60/12-oz.	0.65/12-oz.	0.75/12-oz.
Cheese, Long Horn		1.20/1-lb.	1.30/1-lb.	1.45/1-lb.
OTHER PRODUCTS:				
Coffee (Beans)		74.65/100-lb.	82.10/100-lb.	2.10/k
Peanut Butter		18.50/cs./24	20.40/cs./24	1.00/1-lb.
SPICES:				
Black pepper, ground.....	1½-oz.	0.55	0.60	0.70
Black pepper, ground.....	2-oz.	0.70	0.80	0.90
Black pepper, ground.....	4-oz.	1.40	1.55	1.80
Black pepper, ground.....	8-oz.	2.80	3.10	3.60
Black pepper, ground.....	1-lb.	4.70	5.20	6.00
White pepper, ground	1½-oz.	0.70	0.80	0.95
White pepper, ground	1-lb.	5.80	6.40	7.35
Cinamon, ground.....	1½-oz.	0.15	0.20	0.25
Cinamon, ground.....	2-oz.	0.30	0.35	0.40
Cinamon, ground.....	4-oz.	0.50	0.55	0.65
Cinamon, ground.....	1-lb.	1.20	1.35	1.55
All spice, ground	1½-oz.	0.15	0.20	0.25
All spice, ground	1-lb.	1.35	1.50	1.75
Ginger, ground	2-oz.	0.35	0.40	0.45
Paprika ground	1-oz.	0.15	0.20	0.25
Paprika ground	2-oz.	0.35	0.45	0.50
Paprika ground	2½-oz.	0.45	0.50	0.60
Curry powder, ground	1½-oz.	0.20	0.25	0.30
Curry powder, ground	3-oz.	0.30	0.35	0.40
Nutmeg, ground	1½-oz.	0.30	0.35	0.40
Nutmeg, ground	2-oz.	0.35	0.40	0.45
Cream tartar	1½-oz.	0.25	0.30	0.35
Cream tartar	1-lb.	0.20	0.25	0.30
Caraway seeds, whole	1½-oz.	0.15	0.20	0.25
Caraway seeds, whole	1-lb.	1.00	1.15	1.30

SEC. 2. This Order shall take effect on July 10, 1950.

Done in the City of Manila, this 7th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 332

FIXING THE CEILING PRICES OF TEXTBOOKS AND
FOR OTHER PURPOSES

By virtue of the powers vested in me by Section 3 of Republic Act No. 509, entitled "An Act declaring national policy, authorizing the President of the Philippines for a limited period to fix ceiling prices of commodities and to promulgate rules and regulations regarding prices of commodities to effectuate such policy, and authorizing the appropriation of a certain sum for the purpose," and upon the recommendation of the Price Administration Board, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. The following elementary and high school textbooks shall not be sold at more than the maximum selling prices for whole-salers and retailers set opposite each:

ELEMENTARY TEXTBOOKS

	Importer's or wholesaler's price	Retail ceiling price
GRADE I:		
Correlated Handwriting, Teacher's Manual, No. 1—Freeman	P0.55	P0.65
Manual for Teacher's in Arithmetic, Grade I—II—Stone et al.	2.45	2.80
Philippine Readers, Book One.....	2.40	2.75
Philippine Progressive Music Series, Pri- mary—Parker et al.	2.40	2.75
	2.90	3.40
GRADE II:		
Correlated Handwriting, Teacher's Manual, No. 2—Freeman	0.55	0.65
Correct English, Grade I & II, rev. ed.— Polley & Martinez.....	4.60	5.30
How We Live—Ty, Sion & Miller.....	2.55	2.95
Manual for Teacher's in Arithmetic, Grade I—II—Stone et al.	2.45	2.80
Philippine Readers Book Two	2.20	2.55
Philippine Progressive Music Series, Prim- ary—Parker et al.	2.90	3.40
GRADE III:		
Correlated Handwriting, Teachers Manual No. 3—Freeman	0.55	0.65
Correct English, Grade III, rev.—Polley & Martinez	2.15	2.55
Philippine Arithmetic, Grade III—Pobla- dor, Cayco & Osias	1.75	1.85
Philippine Progressive Music Series, Pri- mary—Parker et al.	2.90	3.40
Philippine Readers, Book Three, Revised	2.40	2.75

GRADE IV:	Importer's or wholesaler's price	Retail ceiling price
Correlated Handwriting, Teacher's Manual No. 4—Freeman	P0.55	P0.65
Correct English, Grade IV, rev. ed.—Pol- ley & Martinez	2.15	2.55
Home Lands—Miller, Ty & Balagot.....	3.10	3.60
Philippine History in Stories, Benitez		
Philippine Readers, Book Four	2.40	2.75
Philippine Arithmetic, Grade IV—Poblador, Cayco & Osias.....	1.95	2.05
GRADE V:		
Correlated Handwriting, Teacher's Manual No. 5—Freeman	0.55	0.65
Essential of English, Fifth Grade Pearson et al.	2.70	3.15
Intermediate Geography, New Ed.—Miller & Polley	5.55	6.50
Philippine Readers, Book V, 1932 ed.— Osias	2.35	2.75
Stone-Winkle Arithmetic, Intermediate, Book I, rev. ed.	2.15	2.40
Philippine Progressive Music Series—In- termediate Grade	3.30	3.95
GRADE VI:		
Correlated Handwriting, Teacher's Manual No. 6—Freeman	0.55	0.65
Brief History of the Philippines, rev. ed— Fernandez	2.90	3.40
Essential of English, Sixth & Seventh Grades—Pearson et al.	4.10	4.90
Health Through Knowledge & Habits— Brown & Cariño	2.70	3.15
Philippine Readers, Book VI, rev. ed— Osias	2.45	2.85
Stone-Winkle Arithmetic—Intermediate, Book II rev. ed.	2.75	3.15
Philippine Civics—Benitez	3.15	3.15

HIGH SCHOOL TEXTBOOKS

FIRST YEAR:

General Mathematics—Tan & Perez	P5.55	P6.50
Elementary Algebra—Edgerton & Carpen- ter	3.75	4.35
English Fundamentals for Filipino Stu- dents—Jaranilla, Potts & Manalo	4.00	4.70
Modern Times & the Living Past.....	7.15	8.30
Philippine High School Readers, Book One Mendez, Mendez, Potts	3.35	3.90

SECOND YEAR:

English Fundamentals for Filipino Stu- dents—Jaranilla, Potts & Manalo	4.00	4.70
General Science for Philippine Schools Brown & Aldecoa.....	5.30	6.20
History of the Orient—Steiger, Beyer & Benitez	5.75	6.75
History of the U. S., Philippine Edition West & West	5.65	6.25

	Importer's or wholesaler's price	Retail ceiling price
Philippine High School Readers, Book Two		
Mendez, Mendez, Potts.....	P3.35	P3.90
Plane Geometry—Strader & Rhoads.....	3.55	4.20
THIRD YEAR:		
Adventures in Story Land—De Mille	3.20	3.60
Applied Arithmetic for Philippine High Schools—Tan	4.10	4.90
The Book of Make Believe—Allyn & Bacon	3.20	3.60
	3.20	3.60
English in Action, Book Two—Tressler & Shannon	5.10	6.10
New Civics Biology—Hunter & Uichanco	5.15	6.00
Laboratory Manual in Biology.....	2.55	3.10
Philippine Social Life & Progress— Benitez, Tirona & Gatmaytan	5.40	6.30
Inter. Algebra (same contents as "Second Course in Algebra Edgerton & Carpen- ter)	3.75	4.35
Silas Marner (New Pocket Edition).....	1.85	2.20
FOURTH YEAR:		
English in Action, Book Two—Tressler & Shannon	5.30	6.40
English & American Writers—Cress, Smith & Stauffer	4.55	5.30
History of the Philippines—Benitez	5.70	6.70
New Laboratory Experiments in Practical Physics (Loose Leaf) Black & Davis	2.05	2.45
New Practical Physics—Black & Davis....	5.75	6.85
	5.75	6.85
Principles of Economics Applied to the Philippines—Miller	6.20	7.30
KINDERGARTEN		
Before We Read—Cathedral Basic Readers	P1.35	P1.55
We Look and See	0.90	0.95
This is Our Home—Book I & II	1.00	1.20
Growing Up with Numbers	2.50	3.00
We Work and Play	0.90	0.95
GRADE I:		
Here We Come—Faith & Freedom Series..	1.00	1.20
This Is Our Family—Faith & Freedom Series	2.50	3.00
This Is Our Home—Faith & Freedom Series	1.00	1.20
First Communion Catechism—Sr. Anun- ciata	1.50	1.80
The Emmanuel Speller for Catholic Schools 2nd Year	0.75	0.90
Fund With Dick and Jane	2.60	2.80
We Look and See—New Cathedral Basic Readers (1st pre-primer)	1.10	1.30
We Work and Play—New Cathedral Basic Readers (2nd pre-primer)	1.10	1.30
We Come and Go—New Cathedral Basic Readers (3rd pre-primer)	1.20	1.45
Think and Do	1.20	1.45
Our New Friends—Book One	2.85	3.00

	Importer's or wholesaler's price	Retail ceiling price
GRADE II:		
Friends and Neighbors (Rev. J. O'Brien)..	P3.15	P3.30
More Friends and Neighbors (Rev. J. O'Brien)	3.15	3.30
Number Stories—Book II	3.60	4.30
Our New Friends	3.45	4.15
GRADE III:		
Baltimore Catechism No. 1 (Fr. Mcguirre)	0.55	0.65
New Cathedral Basic Readers: Stree and Roads—Book 3	3.50	3.70
More Streets and Roads—Books 3	3.50	3.70
GRADE IV:		
Voyages in English—Rev. Campbell & Sr. Mc-Nickle 4th year	2.50	3.00
Baltimore Catechism No. 1 Mcguirre	0.75	0.90
The Emmanuel Speller for Catholic Schools—4th grade	0.55	5.65
GRADE V:		
My Bible History—Newton	2.25	2.30
Voyages in English—Rev. Campbell & Sr. Mc-Nickle	2.70	3.20
Basic Studies in Science—Book II (Cathedral Ed.) Discovering Our World—Rev. F. P. Cava Nough	5.40	6.50
Days and Deeds—5R	4.05	4.30
GRADE VI:		
Voyages in English—Rev. Campbell & Sr. Mc-Nickle	2.70	3.20
Basic Studies in Science—Book III (Cathedral Ed.) Discovering Our World—Rev. F. P. Cava Nough.	5.40	6.50
English Six—Gr. 8	2.60	3.10
The Emmanuel Speller for Catholic Schools	0.75	0.90
HIGH SCHOOL—SECTARIAN		
FIRST YEAR:		
Joy in Reading—Deferrari	P5.75	P6.00
World History—Obrien	6.05	7.00
Bible History—Schuster	1.85	2.20
First Year Latin—Scott & Horne	5.50	6.00
CEAP Short Stories—McMullen	2.40	2.85
The Making of Today's World—Hughes....	7.35	8.00
The Way, the Truth, and the Life—Flynn	3.65	4.35
First Year English Course—McMullen	2.75	3.00
Prose & Poetry for Enjoyment—Megraw....	5.90	6.10
New Home Economics—Omnibus	8.05	9.65
Lamb Tales from Shakespeare—Winston Edition	5.20	6.20
SECOND YEAR:		
Prose & Poetry for Appreciation—Megraw	5.95	6.10
Literary Appreciation Through Reading— Deferrari	5.85	6.00
First Spanish Course—Hill & Ford	5.85	6.20
Latin Grammar—2nd year—Scott San- ford et al.	6.65	8.00
Biology—Brother Charles	5.40	6.50
Standard History of American—Lowker....	7.95	9.50

	Importer's or wholesaler's price	Retail ceiling price
THIRD YEAR:		
Baltimore Catechism No. 2 Fr. Mcguirre	P0.75	P0.85
American Profile—Deferrari	7.95	9.50
Third Year Latin—Scott, Horne & Gum- mere	6.20	6.50
Spanish—El Mundo Español—Casis	4.80	5.75
Living Our Faith—Flynn	3.90	4.50
Prose & Poetry of America—Megraw.....	7.35	8.50
Merchant of Venice—Bristol Board	1.35	1.60

FOURTH YEAR:

Prose & Poetry of England—McGuchen et al.	6.40	6.50
Elements of Physics—Fuller	6.20	7.40
Macbeth—Bristol Board	1.30	1.50
English Voices—Rev. Deferrari	7.35	8.50
El Mundo Español—Rev. Ed.—Dila Mary & Co.....	4.80	5.75
Five Great Encyclicals	1.15	1.20
Faith of Millions—J. Obrien.....	1.95	2.00
Faith in Action—Flynn	3.65	4.00

SEC. 2. This Order shall take effect upon its promulga-
tion.

Done in the City of Manila, this 13th day of July, in
the year of Our Lord, nineteen hundred and fifty, and of
the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 333

AUTHORIZING THE PRICE ADMINISTRATION
BOARD TO MAKE ADJUSTMENTS IN THE MAXI-
MUM PRICES TO WHICH AN IMPORTER OR
WHOLESALE IS ENTITLED.

By virtue of the powers vested in me by section 3 of
Republic Act No. 509, entitled "An Act declaring National
Policy, authorizing the President of the Philippines for
a limited period to fix ceiling prices of commodities and
to promulgate rules and regulations regarding prices of
commodities to effectuate such policy, and authorizing the
appropriation of a certain sum for the purpose," and upon

the recommendation of the Price Administration Board, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. Should it be found necessary after an Executive Order, fixing the ceiling prices of commodities in accordance with Republic Act No. 509, has been promulgated to make adjustments in the maximum prices to which an importer or wholesaler is entitled, such adjustments may be made by the Price Administration Board, subject to approval by the President, provided that the fixed retail ceiling prices shall remain unchanged.

SEC. 2. This Order shall take effect immediately.

Done in the City of Manila, this 15th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 334

CONVERTING THE MUNICIPAL DISTRICT OF CLAVERIA, PROVINCE OF ORIENTAL MISAMIS, INTO A REGULAR MUNICIPALITY.

Upon the recommendation of the Secretary of the Interior and pursuant to the provisions of section 68 of the Revised Administrative Code, the municipal district of Claveria, Province of Oriental Misamis, is hereby converted into a regular municipality.

The conversion herein made shall take effect upon the appointment and qualification of the mayor, vice-mayor and a majority of the councilors thereof.

Done in the City of Manila, this 22nd day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 335

FIXING THE DATE OF ORGANIZATION OF THE
GOVERNMENT OF THE CITY OF BUTUAN

WHEREAS, Republic Act No. 523, approved on June 15, 1950, grants to the President of the Philippines authority to fix the date of the organization of the City of Butuan;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, do hereby fix July 21, 1950 as the date for the organization of the government of the City of Butuan and qualification of the City Mayor and Members of the Municipal Board appointed in accordance with section 88 of Republic Act No. 523.

Done in the City of Manila, this 21st day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 336

TRANSFERRING TO THE PHILIPPINE GROUND
FORCE, ARMED FORCES OF THE PHILIPPINES,
5,000 OFFICERS AND ENLISTED MEN AT PRE-
SENT ASSIGNED TO THE PHILIPPINE CONSTABULARY.

By virtue of the powers vested in me by law, and in order to provide for a greater concentration of military effort in suppressing lawlessness, disorder and violence in certain troubled areas of the Philippines. I, Elpidio Quirino, President of the Philippines, do hereby order:

1. Five thousand officers and enlisted men of the Philippine Constabulary, including their individual equipment and supplies, and a proportionate share of the organizational equipment of the whole Philippine Constabulary Command, are hereby transferred to the Philippine Ground Force. Such transfer shall be effected individually and/or by units and as the Commanding General, Armed Forces of the Philippines, may direct.

2. All sums appropriated under Republic Act No. 563 for the pay and allowances of personnel transferred pursuant to this Order are hereby transferred to the corresponding appropriations for the Philippine Ground Force.

3. Other adjustments in the current appropriation of the Armed Forces of the Philippines shall be made by the Secretary of National Defense with the approval of the President.

This Order shall take effect immediately.

Done in the City of Manila, this 25th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 337

FIXING THE CEILING PRICES OF SCHOOL SUPPLIES AND FOR OTHER PURPOSES

By virtue of the powers vested in me by section 3 of Republic Act No. 509, entitled "An Act declaring National Policy, authorizing the President of the Philippines for a limited period to fix ceiling prices of commodities and to promulgate rules and regulations regarding prices of commodities to effectuate such policy, and authorizing the appropriation of a certain sum for the purpose," and upon the recommendation of the Price Administration Board, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. The following School Supplies shall not be sold at more than the maximum selling prices for importers or producers, wholesalers and retailers set opposite each:

SCHOOL SUPPLIES

LOCALLY PRODUCED WITH IMPORTED U. S. A. MATERIALS

Commodity	Unit	Importer's or producer's price	Wholesale price	Retail ceiling price
<i>Grade pads</i>				
100 leaves Grade I.....	100 pads....	P12.66	P13.64	P0.17 ea.
100 leaves Grade II.....	100 pads....	15.67	16.87	0.20 "
100 leaves Grade III.....	100 pads....	13.71	14.76	0.18 "
100 leaves Grade IV.....	100 pads....	15.25	16.42	0.20 "
<i>Intermediate pads</i>				
72 leaves	100 pads....	32.53	35.03	0.43 ea.

Commodity	Unit	Importer's or producer's price	Wholesale price	Retail ceiling price
<i>Composition note book (local and imported)</i>				
24 leaves	gross....	P13.89	P14.96	P0.13 ea.
48 leaves	"	25.10	27.03	0.23 "
96 leaves	"	44.47	47.89	0.40 "

SCHOOL SUPPLIES (IMPORTED)

*Blackboard small, style "T" with
frame and chalk trough*

Sizes:

18" x 24" outside measure- ment	each....	8.89	9.03	10.97 ea.
21" x 30" outside measure- ment	"	9.46	10.19	12.38 "
24" x 36" outside measure- ment	"	12.78	13.76	16.71 "
36" x 48" outside measure- ment	"	25.09	27.02	32.81 "

Wall blackboard style "W"

Size: 24" x 36" outside meas- urement	each....	10.50	11.31	13.74 ea.
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Wall blackboard—Masonite

Sizes:

18" x 24" outside meas- urement	dozen....	24.18	26.04	2.64 ea.
24" x 36" outside meas- urement	"	48.53	52.26	5.29 "

Blackboard erasers

"Andrews" 6" x 2" x 1½".....	gross....	39.81	42.87	0.36 ea.
"Weber" 5" x 2" x 1".....	"	59.96	64.57	0.54 "
"Universal" 5" x 2" x 1½".....	"	77.42	83.37	0.70 "
"Webco" 5" x 2" x 1½".....	"	86.26	92.89	0.78 "

Carbon paper

Folder carbon paper 8" x 13" Stand- ard Wt. Med. finish box....	100 shts....	0.59	0.63	0.77
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Chalks

White chalk

"Waltham" yellow enamel	gross/box....	0.98	1.05	1.28 box
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Crayons:

Crayola No. 8.....	gross....	21.62	23.28	0.20 pkg.
Crayola No. 16.....	"	43.24	46.57	0.39 "
Crayola No. 242.....	"	64.30	69.25	0.58 "

Ink, writing:

Parker Quink—

2-oz.	gross....	42.71	46.00	0.39 ea.
32-oz.	dozen....	25.77	27.76	2.81 "

Diamond ink 2½ oz.

Duro—blue black ft. pen..	gross....	20.41	21.98	0.19 ea.
Imperial black ft. pen.....	"	20.41	21.98	0.19 "

Commodity	Unit	Importer's or producer's price	Wholesale price	Retail ceiling price
Washable true blue ft.				
pen	gross....	P20.41	P21.98	P0.19 ea.
Diamond ink 2½ oz.				
College red ft. pen.....	gross....	20.41	21.98	0.19 ea.
Special blue black writing	"	28.30	30.48	0.26 "
Special violet ft. pen.....	"	32.84	35.36	0.30 "
Special green ft. pen.....	"	32.84	35.36	0.30 "
Special true blue ft. pen..	"	32.84	35.36	0.30 "
Special red ft. pen.....	"	32.84	35.36	0.30 "
Special black ft. pen.....	"	32.84	35.36	0.30 "

Manila paper in sheets

Sizes:

36" x 48"—80 lbs.—480 pamhts.				
ream		19.90	21.43	0.05 ea.
36" x 48"—100 lbs.—480 pamhts.				
ream		23.23	25.02	0.06 "
36" x 48"—120 lbs.—480 pamhts.				
ream		29.15	31.39	0.08 "
36" x 48"—140 lbs.—480 pamhts.				
ream		34.13	36.75	0.09 "
36" x 48"—170 lbs.—480 pamhts.				
ream		40.76	43.89	0.11 "

Pencils

Dixon lead pencil:

"Ticonderoga" Grade Nos. 1, 2,				
25/10, 3 and 4.....	gross....	9.52	10.25	0.09 ea.
"Peco"	"	5.98	6.44	0.05 "
"Advance"	"	8.06	8.68	0.07 "
"Industrial" Grade Nos. 1,				
2, 3, and F.....	"	8.67	9.34	0.08 "

Mongol Eberhard Faber:

482 No. 1.....	gross....	9.91	10.68	0.09 ea.
482 No. 2.....	"	9.91	10.68	0.09 "
482 No. 3.....	"	9.91	10.68	0.09 "
Zero	"	6.09	6.56	0.06 "

Plain chip board

Sizes:

26" x 38"—20 shts. to				
small	bundle....	7.72	8.32	10.10
26" x 38"—30 shts. to				
small	"	7.72	8.32	10.10
26" x 38"—80 shts. to				
small	"	7.84	8.44	10.25
26" x 38"—90 shts. to				
small	"	7.84	8.44	10.25

Commodity	Unit	Importer's or producer's price	Wholesale price	Retail ceiling price
<i>Rubber erasers</i>				
Dixon				
"Norogum" size:				
2½ x 1½ x ⅝.....	gross....	19.21	20.69	0.17 ea.
"Norogum" size:				
1½ x 1 x ⅝.....	"	10.67	11.49	0.10 "
"Erasit" size:				
1½ x 1 x ⅝.....	"	5.40	5.81	0.05 "
<i>Rulers</i>				
"Senco" ruler				
Sizes:				
6" long varnish finished ⅞" wide ⅛" thick scaled in 16th and metric.....	gross....	P8.13	P8.75	P0.07 ea.
12" long d/bevel brass edge, varnish finish 1½" wide, ⅜" thick 1/16th and metric scale.....	"	19.40	20.89	0.19 "
8" long, ⅞" wide plain marked inches and me- tric	"	4.41	4.75	0.04 "
12" long ⅞" wide plain edge marked inches and metric	"	7.35	7.91	0.07 "
18" long s/brass edge flat flexible varnish finish 1½" wide ⅜" thick scaled 16th on both sides	"	47.03	50.65	0.43 "

SEC. 2. Any school supply not included in this list the size and specification of which are the same as those of the foregoing shall have the same ceiling price.

SEC. 3. This Order shall take effect upon its promulgation.

Done in the City of Manila, this 27th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 338

WAIVING THE ADDITIONAL PROGRESSIVE TAXES
TO BE COLLECTED FROM, AND PAID BY,
PROPRIETORS AND OPERATORS OF CERTAIN
SUGAR MILLS FOR THE 1949-1950 CROP.

WHEREAS, most of the sugar centrals in the Philippines, including the buildings and dwelling houses of their laborers, were damaged or destroyed during the last war;

WHEREAS, these sugar centrals have been incurring heavy expenditures in the rehabilitation thereof;

WHEREAS, some of these centrals have been operating at a loss, and others at profits which are inconsiderable; and

WHEREAS, the imposition of the additional progressive taxes on these centrals would be unduly oppressive and, in a few instances, even confiscatory in effect;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, do hereby waive the additional progressive taxes to be paid by proprietors and operators of the following sugar mills for the 1949-1950 crop under Section 2 of Commonwealth Act No. 567:

1. Pampanga Sugar Development Co., Inc.
2. Central Azucarera de Don Pedro
3. Luzon Sugar Company
4. Hind Sugar Company
5. Central Azucarera de Tarlac
6. Ormoc Sugar Company
7. Pampanga Sugar Mills
8. Bogo-Nedellin
9. Asturias Sugar Central
10. Paniqui Sugar Mills
11. Central Azucarera del Norte

Done in the City of Manila, this 31st day of July in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 191

DESIGNATING THE PERIOD FROM AUGUST 19 TO SEPTEMBER 19, 1950, AS "ANTI-TUBERCULOSIS MONTH" AND AUTHORIZING THE PHILIPPINE TUBERCULOSIS SOCIETY TO CONDUCT A NATIONAL FUND AND EDUCATIONAL DRIVE DURING SAID PERIOD.

WHEREAS, tuberculosis kills or disables more Filipinos than any other human affliction does and brings to our

people each year greater economic loss, more grief and more deaths;

WHEREAS, the Philippine Tuberculosis Society is slowly but surely arresting its havoc through medical care and treatment on the one hand and by its effective program of control and prevention through its educational campaign on the other; and

WHEREAS, it is for the benefit of the people themselves that every possible assistance and support, moral as well as material, should be extended to the Philippine Tuberculosis Society to implement its resources vital to its unrelenting crusade against this scourge;

Now, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the authority vested in me by law, do hereby designate the period from August 19 to September 19, 1950, as "Anti-Tuberculosis Month" and authorize the Philippine Tuberculosis Society to conduct a national fund and educational drive during said period. I call upon all citizens and residents of the Philippines, irrespective of nationality or creed, to assist in this humanitarian campaign by giving generously so that we may keep this dreadful disease under control. I authorize all the treasurers of provincial, city and municipal governments as well as school officials to accept, for the Philippine Tuberculosis Society, voluntary contributions and donations and to issue official receipts therefor.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 5th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

PROCLAMATION No. 192

RESERVING FOR ANIMAL BREEDING STATION SITE
PURPOSES CERTAIN PARCELS OF THE PUBLIC
DOMAIN SITUATED IN THE MUNICIPALITY OF
SUAL, PROVINCE OF PANGASINAN, ISLAND
OF LUZON.

Upon the recommendation of the Secretary Agriculture and Natural Resources and pursuant to the provisions of

section 83 of Commonwealth Act No. 141, as amended, I hereby withdraw from sale or settlement and reserve for animal breeding station site purposes, under the administration of the Bureau of Animal Industry, subject to private rights, if any there be, certain parcels of the public domain, situated in the municipality of Sual, Province of Pangasinan, Island of Luzon, and more particularly described in the Bureau of Lands plan IR-1018, to wit:

Lot 1, Ir-1018, Sheet 1

(The Provincial Government of Pangasinan)

A Parcel of land (lot 1 as shown on plan Ir-1918, sheet 1), situated in the barrio of Calle Bell, municipality of Sual, province of Pangasinan. Bounded on the NE., by public land and property of Basilio Gonzales; on the E., by properties of Basilio Gonzales and Carmen Arrachea; on the S., by property of Carmen Arrachea and national road; on the SW., by national road and public land; and on the NW., by public land. Beginning at a point marked "1" on plan, being N. 71° 10' W., 1,380.61 m. from B.L.L.M. 2, Mp. of Sual, Pangasinan, thence No. 76° 17' W., 25.26 m. to point "2"; thence N. 38° 26' W., 38.50 m. to point "3"; thence N. 54° 49' W., 59.46 m. to point "4"; thence N. 16° 59' W., 76.72 m. to point "5"; thence S. 83° 17' W., 28.84 m. to point "6"; thence S. 71° 00' W., 82.24 m. to point "7"; thence S. 61° 46' W., 33.97 m. to point "8"; thence S. 17° 10' W., 42.53 m. to point "9"; thence S. 45° 17' W., 39.28 m. to point "10"; thence N. 33° 28' W., 84.79 m. to point "11"; thence N. 38° 02' W., 97.92 m. to point "12"; thence N. 60° 08' W., 20.69 m. to point "13"; thence N. 86° 10' W., 94.23 m. to point "14"; thence N. 61° 08' W., 43.75 m. to point "15"; thence N. 24° 42' W., 115.66 m. to point "16"; thence N. 86° 24' E., 67.90 m. to point "17"; thence N. 76° 58' E., 114.70 m. to point "18"; thence N. 55° 28' E., 73.46 m. to point "19"; thence N. 42° 11' W., 31.52 m. to point "20"; thence S. 43° 14' W., 64.50 m. to point "21"; thence S. 81° 08' W., 109.67 m. to point "22"; thence N. 41° 30' W., 37.84 m. to point "23"; thence N. 20° 47' E., 27.98 m. to point "24"; thence N. 0° 14' W., 67.46 m. to point "25"; thence S. 69° 44' W., 21.95 m. to point "26"; thence S. 36° 02' W., 35.23 m. to point "27"; thence S. 33° 07' E., 29.81 m. to point "28"; thence S. 32° 59' W., 58.18 m. to point "29"; thence N. 4° 43' W., 47.72 m. to point "30"; thence N. 18° 00' W., 246.80 m. to point "31"; thence N. 53° 32' W., 322.54 m. to point "32"; thence N. 28° 29' E., 410.53 m. to point "33"; thence N. 67° 34' E., 562.35 m. to point "34"; thence N. 89° 19' E., 294.97 m. to point "35"; thence N. 82° 24' E., 379.02 m. to point "36"; thence S. 64° 06' E., 314.29 m. to point "37"; thence 4° 36' W., 150.48 m. to point "38"; thence S. 48° 54' E., 487.42 m. to point "39"; thence S. 1° 55' E., 313.88 m. to point "40"; thence N. 73° 03' W., 168.82 m. to point "41"; thence S. 82° 13' W., 545.84 m. to point "42"; thence S. 3° 37' E., 298.98 m. to point "43"; thence S. 2° 43' W., 231.50 m. to point of beginning; containing an area of 1,491,716 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: points 4, 5, 14, 15, 16, 17, 18, 19, 23, 24, 27, 28, 30, 32, 33, 34, 37, 38, 41, 42 and 43, by G.I.S., on trees; points 7, 21 and 31, by G.I.S. on trees; points 9 and 10, by crosses on big rocks; point 39, by old P.L.S. concrete monument; and the rest, by B. L. Cyl. concrete monument; bearings true; declination 0° 35' E.; date of survey, March 22-24, 29-30, 1949 and that of the approval, Sept. 7, 1949.

"Lot 2 IR-1018, Sheet 2

(The Provincial Government of Pangasinan)

A parcel of land (lot 2 as shown on plan Ir-1018, sheet 2), situated in the barrio of Calle Bell, municipality of Sual, province of Pangasinan. Bounded on the N., by lot 1 of plan Ir-485, property of Hipolita Osana and lot 1 of plan Ir-485; and on the E., SE., SW. and NW., by public land. Beginning at a point marked "1" on plan, being N. 83° 23' W., 889.54 m. from B.L.L.M. 2, Mp of Sual, Pangasinan, thence S. 1° 41' W., 528.62 m. to point "2"; thence S. 47° 49' W., 386.07 m. to point "3"; thence S. 36° 01' W., 554.49 m. to point "4"; thence N. 71° 31' W., 666.58 m. to point "5"; thence N. 33° 20' W., 439.67 m. to point "6"; thence N. 0° 45' W., 349.59 m. to point "7"; thence N. 31° 41' E., 407.49 m. to point "8"; thence N. 10° 21' W., 10.47 m. to point "9"; thence S. 61° 52' E., 379.49 m. to point "10"; thence N. 83° 29' E., 154.98 m. to point "11"; thence S. 74° 54' E., 329.75 m. to point "12"; thence N. 63° 49' E., 318.11 m. to point "13"; thence N. 74° 00' E., 209.36 m. to point of beginning; containing an area of 28,548 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: points 2, 3, 4, 5, 6, 7, and 9, by G.I.S. on crosses on trees; and the rest, by old corners; bearings true; declination 0° 35' E.; date of survey, March 22-24, 29-30, 1949 and that of the approval, September 7, 1949."

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 12th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 193

RESERVING FOR PLANT INDUSTRY NURSERY SITE
PURPOSES A PARCEL OF THE PUBLIC DOMAIN
SITUATED IN THE MUNICIPALITY OF BATO,
PROVINCE OF CATANDUANES, ISLAND OF
CATANDUANES, PHILIPPINES.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of

section 64(d) of the Revised Administrative Code, as amended, I hereby withdraw from sale or settlement and reserve for Plant Industry Nursery Site purposes, under the administration of the Bureau of Plant Industry, subject to private rights, if any there be, a parcel of the public domain situated in sitio Tagbac, barrio Pagsangahan, municipality of Bato, Province of Catanduanes, Island of Catanduanes, and more particularly described in B.F. Map No. C.R.-1, to wit:

"Beginning at a point marked 1 on B.F. map No. C.R.-1, which is N. 6° W., about 4,400 meters from barrio Pagsangahan, municipality of Bato, province of Catanduanes, a narra tree, 40 cm. in diameter, south of national highway; thence following the national highway, N. 44° W, 710 meters to corner 2, a dangula stump, 20 cm. in diameter, west of national highway, thence following the national highway, N. 32° E, 230 meters to corner 3, a hagimit tree, 10 cm. in diameter, north of national highway; thence following national highway, N. 83° E, 340 meters to corner 4, a bulala tree, 40 cm. in diameter, north of national highway; thence following national highway, N. 69° E, 200 meters to corner 5, a white lauan tree, 45 cm. in diameter, north of national highway; thence following national highway, S. 60° E, 200 meters to corner 6, stump miscellaneous sp., 20 cm. in diameter, north of national highway; thence S. 8° F, 290 meters to corner 7, a Bulala tree, 40 cm. in diameter, east of creek; thence S. 8° E, 200 meters to corner 8, a stump, red lauan, 60 cm. in diameter, 20 meters east of creek; thence S. 8° E, 200 meters to corner 9, a balolo tree, 20 cm. in diameter; thence S. 8° E., 200 meters to corner 10 a malugai stump, 50 cm. in diameter; thence S. 8° E, 210 meters to corner 11, a white lauan, 65 cm. in diameter, at edge of cultivation; thence S. 40° W., 175 meters to corner 12, a neunuclea sp. 40 cm. in diameter at edge of cultivation; thence S. 67° W, 115 meters to corner 13, a tanghas tree, 30 cm. in diameter, east of Pangaldawan R. about 40 meters; thence N. 31° W., 210 meters to corner 14, a mayapis tree, 20 cm. at edge of cultivation; thence N. 20° E, 170 meters to corner 15, a humindang tree, 20 cm. in diameter at edge of cultivation; thence N. 9° W., 170 meters to corner 16, a kalamansanai tree, 50 cm. in diameter, east of Bato R. about 40 meters; thence N. 78° W., 160 meters to corner 17, a stake, west of national road; and thence following national road N. 77° W., 50 meters to the point of beginning; containing an area of about 63 hectares."

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 18th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 194

RESERVING FOR RAILROAD RIGHT-OF-WAY PURPOSES A CERTAIN PARCEL OF THE PUBLIC DOMAIN SITUATED IN THE BARRIO OF SUMULONG, MUNICIPALITY OF CALAUAG, PROVINCE OF QUEZON, ISLAND OF LUZON.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act No. 141, as amended, I hereby withdraw from sale or settlement and reserve for railroad right-of-way purposes, under the administration of the Manila Railroad Company, subject to private rights, if any there be, a certain parcel of the public domain situated in the barrio of Sumulong, municipality of Calauag, province of Quezon, Island of Luzon, and more particularly described in the Bureau of Lands plan Psu-120020, to wit:

"A parcel of land (Psu-120020), situated in the barrio of Sumulong, municipality of Calauag, province of Quezon, Bounded on the NE., and NW., by public land; on the SE., by property of the Manila Railroad Company, lot No. 1428 of the cadastral survey of Calauag; and on the SW., by property of the Manila Railroad Company, lot No. 4 New-B of plan Psd-24298. Beginning at a point marked '1' on plan, being N. 47° 56' E., 124.84 meters more or less from B.L.L.M. No. 3, of Calauag cadastre; thence N. 52° 33' W., 26.27 m. to point "2"; thence N. 53° 46' E., 7.41 m. to point "3"; thence N. 58° 40' E., 10.65 m. to point "4"; thence N. 57° 43' E., 30.00 m. to point "5"; thence N. 58° 57' E., 24.98 m. to point "6"; thence N. 60° 33' E., 7.44 m. to point "7"; thence S. 33° 54' E., 22.05 m. to point "8"; thence S. 56° 06' W., 72.00 to the point of beginning; containing an area of 1,821 square meters more or less. All points referred to are indicated on the plan; and on the ground, are marked as follows: point "1" by old corner; point "2" by P.L.S. M. R. concrete monument 15 cm. diameter by 60 cm.; and points "3" to "8" inc., by rails 45 by 80 cm. long 20 cm. above ground; bearings true; declination 0° 38' E., date of survey, May 17 and June 16-18, 1948.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 18th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 195

POSTPONING THE PERIOD DECLARED AS INDUSTRIAL PEACE WEEK FROM JULY 24-29, 1950, TO AUGUST 21-26, 1950.

WHEREAS, under Proclamation No. 185, dated June 6, 1950, the period from July 24 to 29, 1950, was declared as Industrial Peace Week;

WHEREAS, in connection with the celebration of Industrial Peace Week, labor-management conference is scheduled to be held beginning July 24, 1950; and

WHEREAS, it appears that the representatives of the Joint Chamber of Commerce are not prepared to attend said conference on the date fixed therefor;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do here postpone the period declared as Industrial Peace Week from July 24-29, 1950, to August 21-26, 1950.

Proclamation No. 185, dated June 6, 1950, is modified accordingly.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 22nd day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 196

CALLING THE CONGRESS OF THE PHILIPPINES TO
A SPECIAL SESSION

WHEREAS, the public interest requires that the Congress of the Philippines be convened in special session in order to consider urgent legislative measures;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby call the Congress of the Philippines to a special session for a period of ten days commencing at ten o'clock in the morning of the 1st day of August, 1950, for the purpose of considering such specific measures as will be included in a special message.

All persons entitled to sit as members of the Congress of the Philippines are requested to take notice of this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 25th day of July in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 197

EXCLUDING FROM THE OPERATION OF PROCLAMATION NO. 336, SERIES OF 1938, AND DECLARING OPEN TO DISPOSITION UNDER THE PROVISIONS OF THE PUBLIC LAND ACT, LOT 3, PSM-492, SITUATED IN THE MUNICIPALITY OF ABORLAN, PROVINCE OF PALAWAN, ISLAND OF PALAWAN.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of Section 88 of Commonwealth Act No. 141, as amended, I hereby exclude from the operation of Proclamation No. 336, series of 1938, and declare open to disposition under the provisions of the Public Land Act, Lot 3, Psm-492, situated in the municipality of Aborlan, Province of Palawan, Island of Palawan.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 29th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

[SEAL]

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 198

DECLARING SATURDAY, AUGUST 19, 1950, A SPECIAL PUBLIC HOLIDAY IN QUEZON PROVINCE AND QUEZON CITY.

WHEREAS, the seventy-second anniversary of the birth of the late President Manuel L. Quezon falls on August 19, 1950; and

WHEREAS, the people of Quezon Province and Quezon City desire to be afforded a special opportunity to celebrate his birthday anniversary with a view to giving a tangible expression of their gratitude for his patriotic service to the cause of Philippine freedom;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by Section 30 of the Revised Administrative Code, do hereby declare Saturday, August, 19, 1950, as a special public holiday in Quezon Province and Quezon City.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 29th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 122

AUTHORIZING THE PARAMOUNT SURETY AND
INSURANCE COMPANY, INC., TO BECOME A
SURETY UPON OFFICIAL RECOGNIZANCES,
STIPULATIONS, BONDS AND UNDERTAKINGS.

WHEREAS, section 1 of Act No. 536, as amended by Act No. 2206, provides that whenever any recognizance, stipulation, bond or undertaking conditioned for the faithful performance of any duty or of any contract made with any public authority, national, provincial, municipal, or otherwise, or of any undertaking, or for the doing or refraining from doing anything in such recognizance, stipulation, bond or undertaking specified, is, by the laws of the Philippines or by the regulations or resolutions of any public authority therein, required or permitted to be given with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance of the condition thereof shall be sufficient when executed or guaranteed solely by any corporation organized under the laws of the Philippines, having power to guarantee the fidelity of persons holding positions of public or private trust and to execute and guarantee bonds or undertakings in judicial proceedings and to agree to the faithful performances of any contract or undertaking made with any public authority;

WHEREAS, said section further provides that no head of department, court, judge, officer, board, or body executive, legislative or judicial shall approve or accept any corporation as surety on any recognizance, stipulation, bond, contract, or undertaking, unless such corporation has been authorized to do business in the Philippines in the manner provided by the provisions of said Act No. 536, as amended, nor unless such corporation has by contract with the Government of the Philippines been authorized to become a surety upon official recognizances, stipulations, bonds, and undertakings; and

WHEREAS, the Paramount Surety and Insurance Company, Inc., is a domestic corporation organized and existing under the laws of the Republic of the Philippines and fulfills the conditions prescribed by said Act No. 536, as amended.

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers in me vested by law, do

hereby authorized the Paramount Surety and Insurance Company, Inc., to become a surety upon official recognizances, stipulations, bonds, and undertakings in such manner and under such conditions as are provided by law, except that the total amount of immigration bonds that it may issue shall not, at any time, exceed its admitted assets.

Done in the City of Manila, this 5th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 123

AUTHORIZING THE WORLD-WIDE INSURANCE AND SURETY COMPANY, INC., TO BECOME A SURETY UPON OFFICIAL RECOGNIZANCES, STIPULATIONS, BONDS AND UNDERTAKINGS.

WHEREAS, section 1 of Act No. 536, as amended by Act No. 2206, provides that whenever any recognizance, stipulation, bond or undertaking conditioned for the faithful performance of any duty or of any contract made with any public authority, national, provincial, municipal, or otherwise, or of any undertaking, or for the doing or refraining from doing anything in such recognizance, stipulation, bond or undertaking specified, is, by the laws of the Philippines or by the regulations or resolutions of any public authority therein, required or permitted to be given with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance of the condition thereof shall be sufficient when executed or guaranteed solely by any corporation organized under the laws of the Philippines, having power to guarantee the fidelity of persons holding positions of public or private trust and to execute and guarantee bonds or undertakings in judicial proceedings and to agree to the faithful performances of any contract or undertaking made with any public authority;

WHEREAS, said section further provides that no head of department, court, judge, officer, board, or body executive, legislative or judicial shall approve or accept any corporation as surety on any recognizance, stipulation, bond, contract, or undertaking, unless such corporation has been authorized to do business in the Philippines in the manner provided by the provisions of said Act No. 536, as amended, nor unless such corporation has by contract with the Government of the Philippines been authorized to become a surety upon official recognizances, stipulations, bonds, and undertakings; and

WHEREAS, The World-Wide Insurance and Surety Company, Inc., is a domestic corporation organized and existing under the laws of the Republic of the Philippines and fulfills the conditions prescribed by said Act No. 536, as amended;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers in me vested by law, do hereby authorize The World-Wide Insurance and Surety Company, Inc., to become a surety upon official recognizances, stipulations, bonds and undertaking in such manner and under such conditions as are provided by law, except that the total amount of immigration bonds that it may issue shall not, at any time, exceed its admitted assets.

Done in the City of Manila, this 7th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 124

AUTHORIZING THE CENTURY INSURANCE COMPANY, INC., TO BECOME A SURETY UPON OFFICIAL RECOGNIZANCES, STIPULATIONS, BONDS AND UNDERTAKINGS.

WHEREAS, section 1 of Act No. 536, as amended by Act No. 2206, provides that whenever any recognizance, stipu-

lation, bond or undertaking conditioned for the faithful performance of any duty or of any contract made with any public authority, national, provincial, municipal, or otherwise, or of any undertaking, or for the doing or refraining from doing anything in such recognizance, stipulation, bond or undertaking specified, is, by the laws of the Philippines or by the regulations or resolutions of any public authority therein, required or permitted to be given with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance, of the condition thereof shall be sufficient when executed or guaranteed solely by any corporation organized under the laws of the Philippines, having power to guarantee the fidelity of persons holding positions of public or private trust and to execute and guarantee bonds or undertakings in judicial proceedings and to agree to the faithful performance of any contract or undertakings made with any public authority;

WHEREAS, said section further provides that no head of department, court, judge, officer, board, or body executive, legislative or judicial shall approve or accept any corporation as surety on any recognizance, stipulation, bond, contract, or undertaking, unless such corporation has been authorized to do business in the Philippines in the manner provided by the provisions of said Act No. 536, as amended, nor unless such corporation has by contract with the Government of the Philippines, been authorized to become a surety upon official recognizances, stipulations, bonds, and undertakings; and

WHEREAS, the Century Insurance Company, Inc., is a domestic corporation organized and existing under the laws of the Republic of the Philippines and fulfills the conditions prescribed by said Act No. 536, as amended;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers in me vested by law, do hereby authorize the Century Insurance Company, Inc., to become a surety upon official recognizances, stipulations, bonds and undertakings in such manner and under such conditions as are provided by law, except that the total amount of immigration bonds that it may issue shall not, at any time, exceed its admitted assets.

Done in the City of Manila, this 7th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 126

REMOVING MR. JUAN M. BARBA FROM OFFICE AS
REGISTER OF DEEDS OF ILOCOS NORTE

This is an administrative case against Mr. Juan M. Barba, Register of Deeds of Ilocos Norte.

It appears that respondent has been absent from office from August 12, 1949, up to the present without proper application for leave and without even communicating with his office or his superiors as to his whereabouts. It also appears that in 1948 he went on leave for 160 days, either for personal business or for medical treatment, but no medical certificate was submitted by him justifying his applications for sick leave.

The foregoing constitutes not only violation of civil service rules and regulations but also abandonment of office to the detriment of the public service.

Wherefore, respondent Juan M. Barba is hereby removed from office as Register of Deeds of Ilocos Norte, effective as of August 12, 1949.

Done in the City of Manila, this 18th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 127

PLACING ALL CONSTABULARY UNITS UNDER THE
OPERATIONAL CONTROL OF THE COMMAND-
ING GENERAL, ARMED FORCES OF THE PHIL-
IPPINES.

In order to secure a more effective coordination of the urgent measures to combat lawlessness, disorder and vio-

lence in troubled areas of the country, and for the proper training and preparation of the armed forces for national defense, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do hereby place all units of the Philippine Constabulary throughout the country, and such other armed elements as may be attached thereto, under the operational control of the Commanding General, Armed Forces of the Philippines, effective immediately, and until further orders.

Administrative Order No. 113, dated April 1, 1950, is hereby superseded.

Done in the City of Manila, this 26th day of July, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

OFFICIAL GAZETTE VOL. 43, NO. 1

REPUBLIC ACTS

Enacted during the First Session of the Second Congress, Republic of the Philippines, from January 23 to May 18, 1950

H. No. 981

[REPUBLIC ACT NO. 456]

AN ACT TO PROHIBIT THE REGISTRATION OF CERTAIN DOCUMENTS AFFECTING REAL PROPERTY WHICH IS DELINQUENT IN THE PAYMENT OF REAL ESTATE TAXES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. No voluntary document by which real property or an interest therein is sold, transferred, assigned, mortgaged or leased shall be registered in the registry of property, unless the real estate taxes levied and actually due thereon shall have been fully paid. If evidence of such payment is not presented within fifteen days from the date of entry of said document in the primary entry book of the register of deeds, the entry shall be deemed cancelled. A certificate of the provincial, city or municipal treasurer showing that the real property involved is not delinquent in taxes shall be sufficient evidence for the purposes of this Act.

SEC. 2. Every document of transfer or alienation of real property filed with the Register of Deeds shall be accompanied with an extra copy of the same which copy shall be transmitted by said officer to the city or provincial assessor, irrespective of whether said document has been registered or denied registration: *Provided, however,* That the failure to furnish the Register of Deeds with a copy of the document of transfer or alienation referred to in this section shall not invalidate an otherwise valid agreement.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 8, 1950.

H. No. 992

[REPUBLIC ACT NO. 457]

AN ACT PROVIDING THAT THE REGISTERS OF DEEDS OF THE PROVINCES OF ALBAY, CAMARINES SUR AND NEGROS ORIENTAL BE THE *EX OFFICIO* REGISTERS OF DEEDS FOR THE CITIES OF LEGASPI, NAGA, AND DUMAGUETE, RESPECTIVELY, WHILE SAID CITIES CONTINUE TO BE THE CAPITALS OF SAID PROVINCES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Any provision of existing law to the contrary notwithstanding, the registers of deeds of the Provinces of Albay, Camarines Sur and Negros Oriental shall be *ex officio* registers of deeds for the Cities of Legaspi, Naga and

Dumaguete, respectively, while said cities continue to be the capitals of said provinces.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 8, 1950.

H. No. 1021

[REPUBLIC ACT No. 458]

AN ACT GRANTING THE BAGATAYAM ELECTRIC CO. A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER PLANT IN THE MUNICIPALITIES OF SOGOD AND CATMON, CEBU PROVINCE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to the Bagatayam Electric Co., for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and power plant, utilizing for this purposes the current of the Bagatayam River, for the purpose of generating and distributing electric light, heat and/or power for sale within the municipalities of Sogod and Catmon, both of Cebu Province: *Provided*, That the holder of the franchise herein granted shall start the operation thereof within one and a half years from the approval of said franchise.

SEC. 2. It is expressly provided that in the event the Government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the Government all serviceable equipment therein, at cost.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 8, 1950.

H. No. 1054

[REPUBLIC ACT No. 459]

AN ACT TO AUTHORIZE THE CREDITING OF ALL PRIOR SERVICE RENDERED IN THE ARMY OF THE UNITED STATES BY THE LATE BRIGADIER GENERAL VICENTE LIM IN THE COMPUTATION OF RETIREMENT BENEFITS PAYABLE TO HIS MINOR LEGITIMATE CHILDREN AND WIDOW UNDER THE PROVISIONS OF REPUBLIC ACT NUMBERED THREE HUNDRED FORTY.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The provisions of any existing law to the contrary notwithstanding, the amount of retirement pay to which the minor legitimate children and widow of the late Brigadier General Vicente Lim shall be entitled to receive under the provisions of sections two, three and

fourteen of Republic Act Numbered Three hundred forty, otherwise known as the "Armed Forces Retirement Act", shall be computed on the basis of the total period of active service rendered by the decedent as cadet of the United States Military Academy and as a commissioned officer in the Army of the United States and in the Philippine Army. All pertinent provisions of Republic Act Numbered Three hundred forty not in conflict with the provisions of this Act shall be applicable in determining the rights to and amount of retirement pay due the decedent's minor children and widow.

SEC. 2. All sums necessary for the payment of the retirement pay pursuant to the provisions of this Act shall be paid from fund annually appropriated for the Armed Forces of the Philippines for the retirement of its personnel.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 8, 1950.

H. No. 1139

[REPUBLIC ACT No. 460]

AN ACT REGULATING THE OPERATION OF SAWMILLS, REQUIRING OPERATORS OF SAWMILLS TO OBTAIN FROM THE DIRECTOR OF FORESTRY PERMITS FOR THE OPERATION OF SUCH SAWMILLS, AND PROVIDING PENALTIES FOR THE VIOLATIONS THEREOF.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. No person, association or corporation shall operate a sawmill without first securing a permit from the Director of Forestry. Said permit shall be issued under such terms and conditions as may be prescribed by the said Director with the approval of the Secretary of Agriculture and Natural Resources: *Provided*, That the Director of Forestry shall not issue such permit to any person, association or corporation which is not a holder of a timber license, unless said Director is satisfied as to the source of adequate supply of timber for the sawmill of such person, association, or corporation.

SEC. 2. Every applicant for a permit to operate a sawmill shall file with the Director of Forestry a statement showing: (1) the name, citizenship, and residence of the owner or operator of the sawmill, or the name of the association or corporation, in case the applicant is an association or corporation; (2) the description of the equipment used in the establishment; (3) the cost or value of such equipment; and (4) the location of the sawmill.

SEC. 3. Each sawmill operating in accordance with the provisions of this Act shall have displayed on its premises in a prominent place exposed to public view the permit issued under this Act.

SEC. 4. With the approval of the Secretary of Agriculture and Natural Resources, the Director of Forestry shall issue such rules and regulations as may be necessary to carry out the provisions of this Act, including regulations

prescribing the annual fees for the permits to be granted thereunder, which shall be graduated on the basis of the output of the sawmills and which shall in no case exceed one thousand pesos for any permit.

SEC. 5. Any person, association or corporation, which shall operate a sawmill without the prescribed permit or which fails to display on its premises such permit or which shall violate any of the provisions of this Act and the rules and regulations issued thereunder, shall be punished by a fine of not less than one thousand and not more than ten thousand pesos.

SEC. 6. This Act shall take effect upon its approval.

Approved, June 8, 1950.

H. No. 1222

[REPUBLIC ACT No. 461]

AN ACT APPROPRIATING AN ADDITIONAL SUM OF TWENTY MILLION PESOS FOR THE ARMED FORCES OF THE PHILIPPINES FOR THE CAMPAIGN FOR THE MAINTENANCE OF PEACE AND ORDER.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby appropriated out of any funds in the Philippine Treasury not otherwise appropriated an additional sum of twenty million pesos for the Armed Forces of the Philippines for the campaign for the maintenance of peace and order, as hereunder specified:

1. Base pay of officers	₱1,106,280.00
2. Quarters allowance of officers	194,880.00
3. Subsistence allowance of officers	135,415.00
4. Base pay of enlisted men	5,960,040.00
5. Quarters allowance of enlisted men.....	1,026,144.00
6. Subsistence allowance of enlisted men....	2,905,035.00
7. Clothing allowance of enlisted men.....	1,169,973.00
8. For organizational and individual equipment and supplies including operational expenses, replacement and repair of equipment	7,217,133.00
(a) Ordnance	₱2,860,133.00
(b) Engineers	1,418,000.00
(c) Signal	987,000.00
(d) Quartermaster	1,095,000.00
(e) Medical	857,000.00
Total	<u>₱7,217,133.00</u>
9. For intelligence and counter-intelligence work, including the payment of rewards for the capture, dead or alive, of dissident elements and for such other expenditures that may be needed in connection with the campaign against dissident elements	285,100.00
(a) Intelligence and counter-intelligence, including rewards.....	₱145,000.00

(b) Traveling expenses....	100,000.00
(c) Miscellaneous and incidental expenses....	40,100.00
Total	<u>₱285,100.00</u>
Total	<u>₱20,000,000.00</u>

SEC. 2. No portion of this appropriation shall be used for the purchase of staff cars.

SEC. 3. Whenever in his judgment the public interest so requires, the President of the Philippines shall have authority to transfer any portion of the appropriations provided in this Act from one item to another for the Armed Forces of the Philippines: *Provided, however, That no item shall be augmented by more than fifty per centum of the original appropriation provided in this Act for such item.*

SEC. 4. This Act shall take effect upon its approval.

Approved, June 8, 1950.

S. No. 16

[REPUBLIC ACT No. 462]

AN ACT TO AMEND SECTION SEVENTY-SIX OF ACT NUMBERED FOUR THOUSAND AND THREE, AS AMENDED BY COMMONWEALTH ACT NUMBERED FOUR HUNDRED AND SEVENTY-ONE ENTITLED "AN ACT TO AMEND AND COMPILE THE LAWS RELATING TO FISH AND OTHER AQUATIC RESOURCES OF THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES."

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section seventy-six of Act Numbered Four thousand and three, as amended, is hereby further amended to read as follows:

"SEC. 76. *Use of obnoxious or poisonous substances, or explosives in fishing.*—Any person who shall use obnoxious or poisonous substances in fishing in violation of the provisions of section eleven of this Act shall be punished by a fine of not less than five hundred pesos nor more than five thousand, and by imprisonment for not less than six months nor more than five years, or both, in the discretion of the court, aside from the confiscation and forfeiture of all explosives, boats, tackle, apparel, furniture and other apparatus used in fishing in violation of said section eleven of this Act.

"Any person who shall use explosives in fishing in violation of the provisions of section twelve of this Act shall be punished by a fine of not less than one thousand five hundred pesos nor more than five thousand, and by imprisonment for not less than one year and six months nor more than five years, aside from the confiscation and forfeiture of all explosives, boats, tackle, apparel, furniture,

and other apparatus used in fishing in violation of said section twelve of this Act."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 9, 1950.

S. No. 99

[REPUBLIC ACT No. 463]

AN ACT TO REPEAL SECTION NUMBERED ONE
HUNDRED SEVENTY-SEVEN OF THE NATIONAL
INTERNAL REVENUE CODE.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. Section numbered one hundred seventy-seven
of the National Internal Revenue Code is hereby repealed.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 9, 1950.

H. No. 74

[REPUBLIC ACT No. 464]

AN ACT CHANGING THE NAME OF BARRIO HAC-
LAGAN, IN THE MUNICIPALITY OF TANAWAN,
PROVINCE OF LEYTE, TO STO. NIÑO.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. The barrio of Haclagan, in the municipality
of Tanawan, Province of Leyte, shall hereafter be known
as "Sto. Niño."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 9, 1950

H. No. 146

[REPUBLIC ACT No. 465]

AN ACT TO STANDARDIZE THE EXAMINATION AND
REGISTRATION FEES CHARGED BY THE NA-
TIONAL EXAMINING BOARDS, AND FOR OTHER
PURPOSES.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. Any provisions of existing laws to the con-
trary notwithstanding, every applicant for examination
for the professions of physician, pharmacist, dentist,
optometrist, certified public accountant, master mariner,
chief mate, major patron, chief and second steam and
motor engineers, architect, chemical engineer, civil en-
gineer, professional and associate electrical engineers, pro-
fessional mechanical engineer, mechanical plant engineer,
mining engineer, and veterinarian shall pay an examina-
tion fee of thirty-five pesos; for examination for nurse,
second and third mates, minor patron, harbor, bay, river
and lake patron, third and fourth steam and motor en-
gineers, bay, river, and lake motor engineers, assistant
electrical engineer, junior mechanical engineer, master
electrician, certified plant mechanic, and surveyors, twenty
pesos; and for midwife, twenty pesos.

SEC. 2. Every applicant for registration for any of the above-named professions who passed the corresponding examination, shall pay a registration fee of ten pesos: *Provided*, That an applicant for a certificate of proficiency in the practice of chemical engineering and for registration without examination as certified public accountant, Chinese druggist, nurse, midwife, architect, chemical engineer, civil engineer, professional electrical engineer, associate electrical engineer, assistant electrical engineer, master electrician, and mining engineer, shall pay a registration fee of fifty pesos; for registration as medical student and Red Cross aid or social worker, five pesos; and for registration as apprentice in pharmacy, two pesos: *Provided, further*, That applicants for registration who qualified in the examination given prior to the approval of this Act, shall pay the corresponding registration fee heretofore prescribed.

SEC. 3. Every practicing physician, pharmacist, dentist, optometrist, certified public accountant, master mariner, chief mate, major patron, chief and second steam motor engineers, architect, chemical engineer, civil engineer, professional and associate electrical engineers, professional mechanical engineer, mechanical plant engineer, mining engineer, and veterinarian shall pay an annual registration fee of two pesos; for nurse, second and third mates, minor patron, harbor, bay, river and lake patron, third and fourth steam and motor engineers, bay, river and lake motor engineers, assistant electrical engineer, junior mechanical engineer, master electrician, certified plant mechanic, and surveyor, one peso a year which shall be paid in advance not later than the fifteenth of November every year.

SEC. 4. Every applicant for duplicate certificates of registration for the professions mentioned in section one of this Act, including Chinese druggist, shall pay a fee of ten pesos; for duplicate registration certificate as medical student, two pesos, and for apprentice in pharmacy, one peso.

SEC. 5. All examination and registration fees shall be paid to the disbursing officer of the Bureau of Civil Service.

SEC. 6. Each chairman and member of the Boards of Examiners, whether a government employee or not, shall receive as compensation a fee not exceeding ten pesos per capita of the candidates examined, even if the results of the examination shall have been released after the approval of this Act: *Provided*, That for each candidate examined or registered without examination, or the results of which shall have been released after this Act becomes effective, as midwife, master electrician, certified plant mechanic, druggist, harbor, bay, river, and lake patron and motor engineer, and for each candidate in the preliminary or final physician examination, each chairman and member shall receive a compensation not exceeding five pesos per candidate.

SEC. 7. All laws, executive orders, rules and regulations or parts thereof, in conflict with the provisions of this Act shall be and are hereby repealed.

SEC. 8. This Act shall take effect upon its approval.

Approved, June 9, 1950.

H. No. 498

[REPUBLIC ACT No. 466]

AN ACT GRANTING JOSE CATOLICO A FRANCHISE
FOR AN ELECTRIC LIGHT, HEAT AND POWER
SYSTEM IN THE MUNICIPALITY OF BUAYAN,
PROVINCE OF COTABATO.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to Jose Catolico, for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat, and/or power for sale within the Municipality of Buayan, Province of Cotabato: *Provided*, That the holder of the franchise herein granted shall start the operation thereof within one and a half years from the approval of said franchise.

SEC. 2. It is expressly provided that in the event the government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender his franchise and will turn over to the government all serviceable equipment therein, at cost.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 9, 1950.

H. No. 524

[REPUBLIC ACT No. 467]

AN ACT TO GRANT TO MRS. ARSENIO R. FRIAL,
MRS. JOSE FILLONES AND MRS. ANGELES L.
VILLAREAL A FRANCHISE FOR AN ELECTRIC
LIGHT, HEAT AND POWER PLANT IN THE
MUNICIPALITY OF DUMALAG, PROVINCE OF
CAPIZ.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-Six hundred and thirty-six as amended by Commonwealth Act Numbered One hundred thirty-two, and to the provisions of the Constitution, there is granted to Mrs. Arsenio R. Frial, Mrs. Jose Fillones and Mrs. Angeles L. Villareal, for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat and/or power for sale within the municipality of Dumalag, Province of Capiz: *Provided*, That the holder of the franchise herein granted shall start the operation thereof within one and a half years from the approval of said franchise.

SEC. 2. It is expressly provided that in the event the Government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantees shall surrender their franchise and will turn over to the

Government all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 9, 1950.

H. No. 600

[REPUBLIC ACT No. 468]

AN ACT GRANTING PEDRO CANTUBA A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER PLANT IN THE MUNICIPALITY OF SAN FERNANDO, ISLAND OF TICA0, PROVINCE OF MASBATE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to Pedro Cantuba, for a period of fifty years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat, and/or power for sale within the Municipality of San Fernando, Island of Ticao, Province of Masbate: *Provided*, That the holder of the franchise herein granted shall start the operation thereof within one and a half years from the approval of said franchise.

SEC. 2. It is expressly provided that in the event the government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender the franchise and will turn over to the government all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 9, 1950.

H. No. 873

[REPUBLIC ACT No. 469]

AN ACT TO GRANT TO CLEOMENES V. PORTUGALEZA, JR., A FRANCHISE TO OPERATE AN ELECTRIC LIGHT, HEAT, AND POWER SYSTEM IN THE MUNICIPALITY OF TOLONG, PROVINCE OF ORIENTAL NEGROS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended, and to the provisions of the Constitution, there is granted to Cleomenes V. Portugaleza, Jr., for a period of fifty years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat, and power plant for the purpose of generating and distributing electric light, heat,

and/or power for sale within the limits of the Municipality of Tolong, Province of Oriental Negros: *Provided*, That the holder of the franchise herein granted shall start the operation thereof within one and a half years from the approval of said franchise.

SEC. 2. It is expressly provided that in the event the Government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the Government all serviceable equipment therein at cost, less reasonable depreciation.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 9, 1950.

H. No. 901

[REPUBLIC ACT No. 470]

AN ACT TO AUTHORIZE THE MANILA RAILROAD COMPANY TO INCUR AN INDEBTEDNESS OF FORTY-FIVE MILLION PESOS FOR THE REHABILITATION, RESTORATION AND EXTENSION OF ITS LINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The Manila Railroad Company is hereby authorized to incur an indebtedness not exceeding forty-five million pesos from any funds under the control of the Government or of any corporation or instrumentality owned or controlled by the Government, on the guarantee of the Government of the Republic of the Philippines, at such rate of interest and under such terms and conditions as shall be agreed upon at the time of entering into each loan contract, for the rehabilitation and restoration of its branch lines from Ligao to Tabaco, Albay, Calamba, Laguna to Batangas, Batangas and from any point in Albay Province to Sorsogon as deemed advisable and feasible by the company or in such other places as the company may deem fit to reestablish its branch lines, extension of its terminal at San Jose, Nueva Ecija, to Daet, Camarines Norte, to Echague, Isabela, to Aparri, Cagayan, to Tagudin, Vigan, Sinit, Ilocos Sur, or any extension of its lines at such other points as the company may deem convenient and suitable for its business, purchase of locomotives, cars, rails, ties and other equipment and accessories of railroad transportation, and for any other purposes of the Manila Railroad Company including the development and promotion of the tourist industry in the Philippines: *Provided*, That the extension of its terminal shall not be placed within one hundred meters, parallel to any national highway.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 9, 1950.

H. No. 904

[REPUBLIC ACT No. 471]

AN ACT PROVIDING THAT FIFTY *PER CENTUM* OF THE FEES COLLECTED FROM THE COPRA STANDARDIZATION AND INSPECTION SERVICE BY VIRTUE OF COMMERCE ADMINISTRATIVE ORDER NUMBERED TWO, DATED JANUARY SIXTEEN, NINETEEN HUNDRED FORTY-EIGHT, SHALL BE PAID TO THE FUNDS OF THE NATIONAL COCONUT CORPORATION FOR THE REHABILITATION OF THE COCONUT INDUSTRY.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. To enable the National Coconut Corporation to advance further its program of industrialization of the coconut industry and the proper utilization of coconut by-products as well as the improvement of the quality of Philippine copra, fifty *per centum* of all the fees collected by the Bureau of Commerce from the Copra Standardization and Inspection Service pursuant to Commerce Administrative Order Numbered Two, dated January sixteen, nineteen hundred forty-eight, of the Department of Commerce and Industry, shall be kept as a special fund and turned over to the National Coconut Corporation beginning June first, nineteen hundred and fifty, to be spent for the purposes mentioned in subsections (a) and (b) of section two of Commonwealth Act Numbered Five hundred eighteen, as amended.

SEC. 2. All amounts released and turned over to the Corporation under this Act shall be charged against its total capitalization of twenty million pesos.

SEC. 3. In the event the National Coconut Corporation is liquidated or dissolved, the funds provided for herein shall be turned over to such entity or corporation as may succeed it in the functions of improving the quality of Philippine copra and industrializing the coconut industry through the proper utilization of the coconut by-products.

SEC. 4. This Act shall take effect upon its approval.

Approved, June 9, 1950.

H. No. 907

[REPUBLIC ACT No. 472]

AN ACT AUTHORIZING THE BUREAU OF PUBLIC WORKS TO ENGAGE THE SERVICES OF PRIVATE ARCHITECTS AND ENGINEERS TO PREPARE COMPLETE PLANS, SPECIFICATIONS AND OTHER RELATED CONTRACT DOCUMENTS FOR PUBLIC BUILDINGS UPON THE REQUEST AND RECOMMENDATION OF THE GOVERNMENT ENTITY, AGENCY OR INSTRUMENTALITY FOR WHICH A BUILDING IS TO BE CONSTRUCTED, AMENDING FOR THE PURPOSE SECTION NINETEEN HUNDRED AND ONE OF THE REVISED ADMINISTRATIVE CODE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Paragraph (f), section nineteen hundred and one of the Revised Administrative Code is hereby amended to read as follows:

"SEC. 1901. *Functions of Bureau of Public Works.*—The general functions of the Bureau of Public Works shall, among other things, comprise:

"(f) The supervision over the architectural and engineering features of buildings, parks, streets, and permanent constructions and improvements of public character throughout the Philippines whether pertaining to the National or other branch of the Government; and the authority to engage the services of private architects and engineers to prepare complete plans, specifications and other related contract documents for public buildings upon request and recommendation of the Government entity, agency or instrumentality upon confirmation of the Department of Public Works for which a building is to be constructed. The Director of Public Works shall be in charge of the preparation of the general plans for the improvement and future development of all the cities and municipalities existing or which may hereinafter exist in the Islands including provincial centers. These plans, once adopted by the municipal or provincial authorities as the case may be with the approval of the Secretary of the Interior, shall stand as the "Official Plans" of said cities and municipalities and no change, modification, or revision shall be made in the execution of these plans without the approval of the Secretary of the Interior, upon the recommendation of the Director of Public Works."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 9, 1950.

H. No. 1236

[REPUBLIC ACT No. 473]

AN ACT TO PROVIDE FOR THE DEVELOPMENT
AND IMPROVEMENT OF THE ROAD SYSTEM IN
MINDANAO AND SULU.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. The sums apportioned to the several provinces and chartered cities in Mindanao and to the Province of Sulu from the special fund in the National Treasury for the maintenance, reconstruction, improvement, and construction of roads, streets, and bridges as provided in section three hundred sixty-one of the National Internal Revenue Code, as amended, and the sums allotted to the said provinces and chartered cities in Mindanao and to the Province of Sulu from the special fund in the said Treasury for the construction and maintenance of roads, streets, and bridges as provided in section seventy-three of the Revised Motor Vehicle Law, as amended, are hereby constituted into a special fund to be known as the "Road System Fund of Mindanao and Sulu."

SEC. 2. Such sums as may hereafter be appropriated from the general fund of the National Treasury for improvement, reconstruction and construction of roads and bridges in Mindanao and Sulu shall likewise accrue into the aforesaid special fund.

SEC. 3. The President of the Philippines, upon the recommendation of the Secretary of Public Works and Communications, shall prepare and adopt or cause to be prepared or adopted a master plan or program for the improvement and reconstruction of existing roads and bridges and the construction of new roads and bridges in Mindanao and Sulu, which will, in accordance with present and future needs, best promote the economic development of the said region, and the President is authorized to allocate moneys from the "Road System Fund of Mindanao and Sulu" to carry out such program.

SEC. 4. Nothing contained in this Act shall be construed as authorizing the President to allocate for construction any amount from the special fund that will be needed for the maintenance of existing unabandoned roads and bridges in each province and city in Mindanao and Sulu based on actual requirements as recommended by the Director of Public Works.

SEC. 5. Sections three hundred sixty-one of the National Internal Revenue Code and seventy-three of the Revised Motor Vehicle Law, both as amended, are hereby amended accordingly.

SEC. 6. This Act shall take effect upon its approval and shall continue in operation until otherwise provided by law, but not beyond June 30, 1954.

Approved, June 9, 1950.

H. No. 1026

[REPUBLIC ACT No. 474]

AN ACT TO AMEND SECTION NINETEEN OF REPUBLIC ACT NUMBERED THREE HUNDRED AND NINE, ENTITLED "AN ACT TO REGULATE HORSE-RACING IN THE PHILIPPINES."

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The first sentence of the proviso appearing in section nineteen of Republic Act Numbered Three hundred and nine is amended to read as follows:

"Provided, however, That of the twelve and one-half per centum representing the commission of the person, race-track, racing club, or any other entity holding horse-racing, an amount equivalent to one-half per centum of the total wager funds or gross receipts from the sale of tickets, plus twenty-five per centum of the breakage, shall be set aside and turned over by the person, race-track, racing club, or any other entity holding horse-racing as a special fund to the Commission on Races to cover its expenses and such other purposes authorized under this Act."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 9, 1950.

H. No. 1082

[REPUBLIC ACT No. 475]

AN ACT APPROPRIATING THE SUM OF FORTY-FIVE THOUSAND PESOS FOR THE MAINTENANCE AND OPERATION OF THE PORT OF CAGAYAN, PROVINCE OF MISAMIS ORIENTAL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sum of forty-five thousand pesos or so much thereof as may be necessary is appropriated, out of any funds in the National Treasury not otherwise appropriated, for the improvement, operation and maintenance of the port of Cagayan, Province of Misamis Oriental.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 9, 1950.

H. No. 1089

[REPUBLIC ACT No. 476]

AN ACT GRANTING ELISEO BARBOSA A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER PLANT IN THE MUNICIPALITY OF AJUY, PROVINCE OF ILOILO.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to Eliseo Barbosa, for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat, and/or power for sale within the municipality of Ajuy, Province of Iloilo: *Provided*, That the holder of the franchise herein granted shall start operation thereof within one and one-half years from the approval of said franchise if he is a new operator; and within six months if he is at present holder of a municipal franchise. Failure to comply with this requirement shall *ipso facto* cancel and void this franchise.

SEC. 2. It is expressly provided that in the event the Government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender his franchise and will turn over to the Government all serviceable equipment herein, at cost.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 9, 1950.

S. No. 151

[REPUBLIC ACT No. 477]

AN ACT TO PROVIDE FOR THE ADMINISTRATION AND DISPOSITION OF PROPERTIES, INCLUDING THE PROCEEDS AND INCOME THEREOF TRANSFERRED TO THE REPUBLIC OF THE

PHILIPPINES, UNDER THE PHILIPPINE PROPERTY ACT OF 1946 AND OF REPUBLIC ACT NO. EIGHT, AND OF THE PUBLIC LANDS AND IMPROVEMENTS THEREON TRANSFERRED TO THE NATIONAL ABACA AND OTHER FIBERS CORPORATION UNDER THE PROVISIONS OF EXECUTIVE ORDER NO. 29 DATED OCTOBER 25, 1946 AND OF EXECUTIVE ORDER NO. 99 DATED OCTOBER 22, 1947.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. All lands which have been or may hereafter be transferred to the Republic of the Philippines in accordance with the Philippine Property Act of 1946 (Act of Congress of the United States of July 3, 1946) and Republic Act Numbered Eight and all the public lands and improvements thereon transferred from the Bureau of Lands to the National Abaca and Other Fibers Corporation under the provisions of Executive Order No. 29, dated October 25, 1946 and of Executive Order No. 99, dated October 22, 1947 shall be subdivided by the National Abaca and Other Fibers Corporation into convenient-sized lots, except such portions thereof as the President of the Philippines may reserve for the use of the National or local governments, or for the use of corporations or entities owned or controlled by the Government. Subdivision lots primarily intended for, or devoted to, agricultural purposes shall not exceed an area of five hectares for coconut lands, ten hectares for improved abaca lands, and twelve hectares for unimproved lands, urban homesite or residential lots shall not exceed an area of one thousand square meters nor less than one hundred fifty square meters.

SEC. 2. Commercial and industrial lots of the public domain shall be disposed of by lease only in accordance with the provisions of Commonwealth Act No. 141, as amended. If the land is patrimonial property of the Republic of the Philippines the lease shall be in accordance with Act Numbered Three thousand thirty-eight.

SEC. 3. All lands so subdivided except commercial and industrial lots shall be sold by the National Abaca and Other Fibers Corporation without the sales application, publication and the public auction required in sections 24, 25 and 26 of Commonwealth Act No. 141, as amended, to persons who are qualified to acquire public agricultural lands: *Provided, however*, That sales of such lands heretofore made by the National Abaca and Other Fibers Corporation without the sales application, publication and public auction as provided in the above-mentioned sections of the Public Land Law are hereby authorized, ratified and confirmed: *Provided, further*, That preference shall be given first to *bona fide* occupants thereof on or before December 12, 1946 and second to veterans of the last war, and to members of the guerrilla organizations and other qualified persons who entered the land after December 12, 1946, but not later than December 31, 1948 and who shall be limited to the area they have actually improved and maintained: *Provided, finally*, That the subdivided lots which may still be un-

occupied shall be disposed of by drawing lots among qualified persons who may apply for said lots.

SEC. 4. Houses and/or buildings which have been transferred to the Republic of the Philippines in accordance with the Philippine Property Act of 1946 and Republic Act Numbered Eight, shall be administered by the Director of Public Works who is hereby authorized to dispose of the same by sale at public auction to the highest bidder when no longer needed for public purposes, giving the veterans who participated in the bidding an option to equal the highest bidder. However, when such buildings are on lands which are also disposable under this Act, the sale of the land and the buildings as well as other improvements thereon shall be made by the National Abaca and Other Fibers Corporation as provided in sections two and three hereof.

SEC. 5. At least ten per cent of the purchase price shall be paid before the contract of sale is signed by the parties and the balance shall be paid in full or in not more than ten equal annual installments with interest at five (5%) *per centum per annum* on the unpaid balance.

For the purpose of this Act, the fixed price for the private sale of agricultural lands and all improvements existing thereon belonging to the Government shall be appraised and determined by a Committee to be composed of a representative of the Chairman and General Manager of the National Abaca and Other Fibers Corporation as Chairman, and representatives of the Philippine Veterans Legion and of the Provincial and/or City Assessor's Office where the property sought to be sold is situated, as members, while the private sale of urban, homesite and residential lots and all improvements existing thereon belonging to the Government shall be appraised and determined by a committee to be composed of a representative of the Chairman and General Manager of the National Abaca and Other Fibers Corporation as Chairman, and representatives of the Auditor General and of the Provincial and/or City Assessor where the property sought to be sold is situated as members.

SEC. 6. Upon approval of this Act, any other branch or agency of the Government administering properties transferred to the Republic of the Philippines under the Philippine Property Act of 1946 and of Republic Act Numbered Eight shall immediately turn over to the National Abaca and Other Fibers Corporation all records, titles, plans and surveys affecting lands described in the title and in Section One of this, including the proceeds and/or income thereof: *Provided, however*, That the National Abaca and Other Fibers Corporation shall retain for model plantations and/or experimental stations and seedling purposes a total of not exceeding two thousand five hundred hectares.

SEC. 7. The National Abaca and Other Fibers Corporation shall be entitled to reimbursement for all expenses and other investments incurred in connection with the administration of the properties now subject to disposition, said amount to be taken out of the proceeds derived from the sale of all lands under this Act.

SEC. 8. Except in favor of the Government or any of its branches, units, or institutions, land acquired under the

provisions of this Act or any permanent improvements thereon shall not be subject to encumbrance or alienation from the date of the award of the land or the improvements thereon and for a term of ten years from and after the date of issuance of the certificate of title, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of such period.

Any occupant or applicant of lands under this Act who transfers whatever rights he has acquired on said lands and/or on the improvements thereon before the date of the award or signature of the contract of sale, shall not be entitled to apply for another piece of agricultural land or urban, homesite or residential lot, as the case may be, from the National Abaca and Other Fibers Corporation; and such transfer shall be considered null and void.

SEC. 9. Except when otherwise provided, the disposition of lands under this Act shall be governed by Commonwealth Act No. 141, as amended and of Act No. 3038 of the Philippine Legislature and of the rules and regulations promulgated thereunder.

SEC. 10. The expenses to be incurred by the National Abaca and Other Fibers Corporation in the subdivision survey and disposition of these lands shall be paid by the occupants in proportion to the respective areas of the land surveyed under their respective applications. The National Abaca and Other Fibers Corporation may assign or delegate the subdivision survey of said lands to duly bonded deputy public land surveyors upon written request of all the occupant-applicants within a lot to be subdivided who might have agreed with the said public land surveyor on the cost and terms of payment on account of such subdivision survey.

SEC. 11. The proceeds and income to be derived from the sale or disposition of all lands and properties under this Act after deducting the amount spent by the National Abaca and Other Fibers Corporation for all expenses and other investments incurred in connection with the administration of these properties shall accrue to a special fund to be made available for the disposal by the President of the Philippines for the rehabilitation of the abaca industry.

SEC. 12. Notwithstanding the provisions of this Act, and for the purpose of protecting the abaca industry, the National Abaca and Other Fibers Corporation is hereby authorized and empowered to supervise and have access to all the lands disposable under the provisions of this Act in so far as the rehabilitation of the abaca industry is concerned.

SEC. 13. The sum of Two hundred thousand pesos is hereby authorized to be appropriated from any fund in the National Treasury not otherwise appropriated for the purpose of enabling the National Abaca and Other Fibers Corporation to accelerate the execution of the subdivision survey and the disposition of the lands authorized under this Act. This sum is in addition to the amount which may be paid or reimbursed by the respective applicants to the National Abaca and Other Fibers Corporation on account of the subdivision survey of their lands.

SEC. 14. This Act shall take effect upon its approval.

Approved, June 9, 1950.

H. No. 38

[REPUBLIC ACT No. 478]

AN ACT TO ESTABLISH, ORGANIZE AND MAINTAIN ONE NATIONAL AGRICULTURAL SCHOOL IN THE PROVINCE OF ILOILO AND TO AUTHORIZE THE APPROPRIATION OF THE SUM OF ONE HUNDRED THOUSAND PESOS FOR THE PURPOSE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The Secretary of Education is hereby authorized to establish, organize and maintain one National Agricultural School in the Province of Iloilo of the Central Luzon Agricultural School type.

SEC. 2. The Secretary of Education is hereby empowered to locate and acquire or cause to be located and acquired a suitable site for the purpose of this Act, which may be public or private lands situated within the Province of Iloilo.

SEC. 3. The sum of one hundred thousand pesos for its establishment and operation and maintenance during the fiscal year nineteen hundred and fifty is hereby authorized to be appropriated out of any funds in the National Treasury not otherwise appropriated. Thereafter, the necessary appropriation for its maintenance shall be included in the annual General Appropriation Acts.

SEC. 4. This Act shall take effect upon its approval.

Approved, June 10, 1950.

H. No. 323

[REPUBLIC ACT No. 479]

AN ACT GIVING RECOGNITION AND CREDIT TO COMMISSIONED NURSES OF THE NURSE CORPS APPOINTED UNDER EXECUTIVE ORDER NO. 267, DATED APRIL 15, 1940, OR WHO SERVED ON ACTIVE MILITARY SERVICE IN THE STATUS OF COMMISSIONED NURSES OF THE ARMY OF THE PHILIPPINES INDUCTED IN THE UNITED STATES ARMED FORCES OF THE FAR EAST AND TO THEIR SERVICES AS SUCH BY INSERTING NEW SUBSECTIONS BETWEEN SUBSECTION (g) AND (h) OF SECTION TWENTY-FIVE OF THE NATIONAL DEFENSE ACT, AS AMENDED.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Three new subsections, to be known as subsections (g-1), (g-2), and (g-3), are inserted between subsections (g) and (h) of section twenty-five of the National Defense Act, as amended, which shall read as follows:

“(g-1) All commissioned officers of the Nurse Corps who were appointed under Executive Order No. 267, dated April 15, 1940, issued pursuant to section 25 (e) of the National Defense Act, as amended by Commonwealth Act Numbered Three hundred and eighty-five, or who were appointed by the President of the Commonwealth of the Philippines and who were inducted into the United States

Armed Forces in the Far East and served honorably as such with the said armed forces, shall be considered as commissioned officers of the Nurse Corps created by Republic Act Numbered Two hundred and three.

“(g-2) All said commissioned nurses shall be credited with a period of service equal to the number of years, months, and days which said nurses served on active military service either as members of the Nurse Corps created by Executive Order No. 267, issued pursuant to section 25(e) of the National Defense Act, as amended by Commonwealth Act Numbered Three hundred and eighty-five, or in the status of commissioned officers of the Army of the Philippines inducted into the United States Armed Forces of the Far East.

“(g-3) The respective ranks and grades which said commissioned nurses held under Executive Order No. 267 or in the status of commissioned nurses of the Army of the Philippines inducted into the United States Armed Forces of the Far East are hereby recognized, and the period of service credited to them, as hereinabove provided, shall be counted and construed as continuous or active service for the purpose of determining their grades and ranks, seniority, promotion and retirement as members of the Nurse Corps, Medical Service: *Provided, however,* That promotions made in the said corps before the approval of this Act shall not be affected thereby.”

SEC. 2. This Act shall take effect upon its approval.

Approved, June 10, 1950.

H. No. 466

[REPUBLIC ACT NO. 480]

AN ACT TO AMEND SUBSECTION (c) OF SECTION FOUR OF REPUBLIC ACT NUMBERED TWO HUNDRED AND NINETY-ONE, BY PROVIDING THAT ORIGINAL APPOINTMENTS IN THE DENTAL CORPS SHALL BE IN THE GRADE OF FIRST LIEUTENANT.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subsection (c) of section four of Republic Act Numbered Two hundred and ninety-one is hereby amended to read as follows:

“(c) Except as hereinafter authorized or unless otherwise expressly provided by law, all initial appointments of Regular Officers shall be in the grade of second lieutenant. Priority in filling vacancies in the grade of second lieutenant will be given: first, to graduates of the Philippine Military Academy or of the United States Military or Naval Academy, or Philippine Air Force or United States

Air Force Flying Schools; second, to honor graduates of senior military training units in schools and colleges; third, to enlisted men who, at the time of appointment, shall have served for at least one full term of enlistment in the Armed Forces of the Philippines and have such other qualifications as may be prescribed by the Secretary of National Defense; and fourth, others who shall have such qualifications as the Secretary of National Defense shall prescribe: *Provided*, That original appointments in the Judge Advocate General's Service, the Medical Corps, and the Dental Corps shall be in the grade of first lieutenant from among applicants who, at the time of appointment, shall be not less than twenty-five nor more than thirty-five years of age, and in addition shall have engaged in the practice of law for at least two years, if appointment is to be made in the Judge Advocate General's Service; and shall have engaged in the practice of medicine or dentistry for at least two years, if appointment is to be made in the Medical Corps or Dental Corps: *Provided, further*, That the President may appoint professors without military rank for the Military Academy, with such compensation as he may prescribe or in such commissioned grades of the Regular Force as he may determine, such professors, associate professors and assistant professors, to be carried as separate roster and in addition to the number of commissioned officers prescribed."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 10, 1950.

H. No. 1160

[REPUBLIC ACT NO. 481]

AN ACT TO PROVIDE MORE EFFICIENT DENTAL CARE FOR THE PERSONNEL OF THE ARMED FORCES OF THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Within three months after the date of enactment of this Act, the Medical Service of the Armed Forces of the Philippines shall be reorganized so as to provide for greater autonomy of the dental service in accordance with the provisions hereof.

SEC. 2. The Secretary of National Defense shall issue such regulations as may be necessary to carry out the intent of this Act, and the procedure for the performance of the dental functions of such Dental Corps shall be defined and prescribed by appropriate directions to be issued by the Chief of Dental Corps; to the end that the Dental Corps of the Armed Forces of the Philippines, shall study, plan and direct all matters coming within the cognizance of such corps and all matters relating to dentistry shall be referred to the Dental Corps.

SEC. 3. The Dental Corps shall (1) establish professional standards and policies for the conduct of the dental

service; (2) issue instruction and conduct inspections and surveys for the maintenance of such standards; (3) initiate and direct all actions relating to the dental service and pertaining to facilities, equipment, supplies, research, tables of organization, planning and personnel, including the appointment, training, classification, assignment, transfer, promotion and decoration of personnel; and (4) submit estimates of the amount of funds needed to maintain the Dental Service: *Provided*, That hereafter all Medical Service Budgets shall provide for a separate allocation of funds for the maintenance of the Dental Service.

SEC. 4. An officer of the Dental Corps of the regular force AFP who is not below the rank of Lt-Colonel and who is credited with fifteen or more years of continuous service, shall be appointed as the Chief of the Dental Corps. All matters relating to the Dental Service as a whole are to be administered by the Chief of the Dental Corps, and such officer while so serving shall have the rank, pay and allowances of not lower than Colonel. In every AFP headquarters and installations having dental facilities, the dental surgeon of such headquarters or installations shall be directly responsible to the Commanding General/Officer of such headquarters or installation for the administration of all matters relating to the Dental Service.

SEC. 5. The number of officers of the Dental Corps shall be not less than two officers for every thousand of the total strength of the AFP authorized from time to time. Hereafter in time of war or other emergency the Dental Corps shall consist of commissioned officers of the same grades and proportionately distributed among such grades as are now or may hereafter be provided for the Medical Corps, and who shall have the rank, pay and allowances of officers of corresponding grades in the Medical Corps.

SEC. 6. All laws and parts of laws in conflict herewith are hereby repealed and nothing contained herein shall act to reduce the grade or rank of any person.

SEC. 7. This Act shall take effect upon its approval.

Approved, June 10, 1950.

S. No. 23

[REPUBLIC ACT No. 482]

AN ACT TO FIX THE PERIOD OF TIME WITHIN WHICH UNLICENSED FIREARMS AND AMMUNITION MUST BE SURRENDERED WITHOUT INCURRING CRIMINAL LIABILITY AND TO PROVIDE FOR THE PAYMENT OF THOSE SURRENDERED WITHIN THE PERIOD HEREIN SPECIFIED.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Any person who holds or possesses any fire-arm and/or ammunition without permit or license may, without incurring any criminal liability, surrender the same within a period of one year from the date this Act shall take effect: *Provided, however*, That this section shall not be interpreted to mean as in any way exempting from such liability any person, without the requisite permit or license,

found, within the aforementioned period of time, making use of said firearm and ammunition or carrying them on his person except for the purpose of surrendering them as herein required: *Provided, further*, That this section shall not in any way affect any case pending in court, on the date of the passage of this Act, for violation of existing laws on firearms and ammunition.

For the purpose of this Act, the terms "firearms" and "ammunition" shall include the types of arms and ammunition enumerated in section two of this Act.

SEC. 2. The Secretary of National Defense shall promulgate such rules and regulations that shall be necessary for the surrender and payment of the firearms and ammunition and shall designate the officers who shall receive the same: *Provided, however*, That payment for surrendered firearms and ammunition shall be made in accordance with the following schedule:

I.—U. S. ARMY STANDARD WEAPONS

	<i>Service- able</i>	<i>Non- serviceable</i>
1. Pistols and Revolvers, cal. .45.....	P75.00	P15.00
2. Thompson Sub-Machine Guns cal. .45..	75.00	25.00
3. Grease Guns, cal. .45.....	60.00	15.00
4. Browning Automatic Rifles, cal. .30.....	75.00	25.00
5. U. S. Carbine, cal. .30.....	75.00	20.00
6. M-1 Garand Rifle, cal. .30.....	75.00	20.00
7. Springfield Rifle, cal. .30.....	60.00	15.00
8. Enfield Rifle, cal. .30.....	50.00	15.00
9. U. S. Trench Mortar	50.00	15.00
10. U. S. Bazooka	40.00	10.00
11. U. S. Machine Gun, cal. .30.....	60.00	15.00
12. U. S. Machine Gun, cal. .50.....	60.00	15.00
13. U. S. Hand Grenades	5.00	None
14. All ammunition for the above firearms except Bazooka and Mortar.....	0.05	None
15. Bazooka and Mortar ammunition.....	1.00	None

II.—MISCELLANEOUS WEAPONS

	<i>Service- able</i>	<i>Non- serviceable</i>
1. Pistols and Revolvers, cals. .22, .25, .32, .38 and 380	P40.00	P10.00
2. Shotguns, .12, .15, .20 and 410 ga.	40.00	15.00
3. Rifles, cals. .22, .30-.06	30.00	10.00
4. Rifle-Shotgun combination, cal. 410-.22	30.00	10.00
5. Ammunition for the above firearms10	.05

SEC. 3. Surrendered firearms and ammunition shall be turned over and deposited with the Philippine Constabulary and shall be subject to such orders and regulations, approved by the Secretary of National Defense, as the Chief of the Philippine Constabulary may issue as to their final disposition.

SEC. 4. The sum necessary to carry out the purpose of this Act shall be taken from the savings that may be realized from the appropriations for the Department of National Defense.

SEC. 5. This Act shall take effect upon its approval.

Approved, June 10, 1950.

H. No. 829

[REPUBLIC ACT No. 483]

AN ACT TO AMEND SECTION NINETEEN HUNDRED FORTY THREE OF THE REVISED ADMINISTRATIVE CODE SO AS TO AUTHORIZE THE PAYMENT OF COMPENSATION FOR OVERTIME WORK AND EXTRA PAY FOR NIGHT SERVICE RENDERED BY POSTAL EMPLOYEES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section nineteen hundred forty-three of the Revised Administrative Code is hereby amended to read as follows:

"SEC. 1943. *Allowance and compensation for overtime work and extra pay for night service.*—1. When necessary service beyond office hours or upon a holiday is rendered by an employee of the Bureau of Posts upon requirement of the Director of Posts, an equal amount of time may be allowed him on a regular work day, but no accumulation of such time shall be allowed for vacation purposes.

"2. Subject to the approval of the Secretary of Public Works and Communications, the Director of Posts may pay compensation for overtime work rendered by employees of the Bureau, in lieu of compensatory time, such overtime pay to be based on their regular wage or salary. In computing the overtime pay of employees paid on the annual basis, the yearly salary shall be divided by the total number of days during the calendar year which remain after deducting the total number of Sundays and legal holidays and the quotient thus obtained will be the daily compensation which, divided by the present number of working hours in an ordinary work day, will give the hourly compensation for such overtime service.

"3. Employees of the Bureau who are required to perform night work shall be paid extra for such work at the rate of ten *per centum* of their hourly pay per hour: *Provided*, That night work is defined as any work done between the hours of six o'clock postmeridian and six o'clock antemeridian."

SEC. 2. The President of the Philippines is hereby authorized to direct the payment of overtime and extra pay for nightwork herein provided out of any savings in the appropriations for the Bureau of Posts during the fiscal year nineteen hundred and fifty-one.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 10, 1950.

H. No. 1137

[REPUBLIC ACT No. 484]

AN ACT TO AMEND THE CHARTER OF THE CITY OF DAGUPAN

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The second paragraph of section seven of Republic Act Numbered One hundred seventy is amended to read as follows:

"SEC. 7. *The Mayor—His appointment and compensation.*—* * *

"He shall receive a salary of not exceeding four thousand eight hundred pesos a year. With the approval of the Secretary of the Interior, the Mayor may be provided, in addition to his salary, a non-commutable allowance of not exceeding two thousand pesos *per annum*."

SEC. 2. The first paragraph of section eleven of the same Act is amended to read as follows:

"SEC. 11. *Constitution and organization of the Municipal Board—Compensation of Members thereof.*—The Municipal Board shall be the legislative body of the city and shall be composed of the Mayor, who shall be its presiding officer, the City Treasurer, the City Engineer, the City Attorney, the City Health Officer, and four councilors who shall be elected at large by popular vote during every election for provincial and municipal officials in conformity with the provisions of the Election Code. In case of sickness, absence, suspension or other temporary disability of any member of the Board, or if necessary to maintain a *quorum*, the President of the Philippines may appoint a temporary substitute who shall possess all the rights and perform all the duties of a member of the Board until the return to duty of the regular incumbent.

* * * * *

SEC. 3. Section twelve of the same Act is amended to read as follows:

"SEC. 12. *Qualifications, election, suspension and removal of Members of Board.*—The elective members of the Municipal Board shall be qualified electors of the city, residents therein for at least one year, and not less than twenty-three years of age. Upon qualifying, the members-elect shall assume office on the date fixed in the Election Code until their successors are elected and have qualified.

"If for any reason the election fails to take place on the date fixed by law, or such election results in a failure to elect one or more of the elective members, the President shall issue as soon as practicable a proclamation calling a special election to fill said office. Whenever the member-elect dies before assumption of office, or, having been elected, his election is not confirmed by the President for disloyalty, or such member-elect fails to qualify for any reason, the President may in his discretion either call a special election or fill the office by appointment. Vacancies in the office of elective members occurring after assumption of office shall be filled by appointment by the President of a suitable person belonging to the political party of the officer whom he is to replace.

"The elective members of the Municipal Board may be suspended or removed from office under the same circumstances, in the same manner, and with the same effect, as elective provincial officers, and the provisions of law providing for the suspension or removal of elective provincial officers are hereby made effective for the suspension or removal of said members of the Board."

SEC. 4. The first paragraph of section eighty-five of the same Act is amended to read as follows:

"SEC. 85. *The Bureau of Education.*—The Director of Bureau of Education shall exercise the same jurisdiction

and powers in the city as elsewhere in the Philippines. The division superintendent of schools for the Province of Pangasinan shall be the *ex officio* superintendent of schools for the City of Dagupan, and as such shall receive an additional compensation of one thousand pesos, payable from the funds of the said city."

SEC. 5. There is inserted after section eighty-nine of the same Act a new section, to be known as section eighty-nine A, which shall read as follows:

"SEC. 89-A. *Election of provincial officials of the Province of Pangasinan.*—The voters of the City of Dagupan shall be qualified to vote for the offices of provincial governor and members of the provincial board of the Province of Pangasinan."

SEC. 6. This Act shall take effect upon its approval, but the members of the Municipal Board of the City of Dagupan who were elected in the last general elections for provincial and municipal officials shall continue in office until the expiration of their term.

Approved, June 10, 1950.

H. No. 1229

[REPUBLIC ACT No. 485]

AN ACT APPROPRIATING AN ADDITIONAL SUM OF TWELVE THOUSAND FIVE HUNDRED THIRTY-FIVE PESOS FOR THE MAINTENANCE AND OPERATION OF THE BUNAWAN NATIONAL JUNIOR AGRICULTURAL SCHOOL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby appropriated out of any funds in the Philippine Treasury not otherwise appropriated, an additional sum of twelve thousand five hundred thirty-five pesos for the maintenance and operation of the Bunawan National Junior Agricultural School.

SEC. 2. This Act shall take effect on July 1, 1950.

Approved, June 10, 1950.

S. No. 117

[REPUBLIC ACT No. 486]

AN ACT TO REPEAL SECTION TWO OF REPUBLIC ACT NUMBERED FOUR, TO TERMINATE THE AUTHORITY GIVEN THEREIN TO THE PRESIDENT OF THE PHILIPPINES FOR THE ISSUANCE OF TEMPORARY FIREARMS LICENSES, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section two of Republic Act Numbered Four is hereby repealed.

SEC. 2. All temporary licenses for firearms issued under the authority of section two of Republic Act Numbered Four are hereby cancelled.

SEC. 3. Notwithstanding the provisions of the next preceding sections, members of municipal and special or

temporary police forces may retain, possess or be authorized to possess the firearms which they hold or may hold under temporary licenses for such time as they shall discharge the duties of their office. Other persons shall be allowed to retain their firearms, by converting their temporary licenses into regular licenses if they possess the qualifications prescribed by existing laws and regulations and upon security of the reglamentary bond. Pending the issuance of the regular license applied for, a provisional permit may be granted.

Any person who possesses any firearm, parts of firearms, or ammunition therefor, under the temporary licenses referred to in the next preceding section of this Act, shall surrender the same to the Commanding General of the Armed Forces of the Philippines, or his duly authorized representatives, within one hundred and twenty days after the approval of this Act: *Provided, however*, That the person making such surrender as provided herein shall be entitled to reimbursement of eighty *per cent* of the purchase price of said arms or ammunitions duly established by evidence in cases where said arms or ammunitions were purchased by virtue of license or permit, and in all other cases the rate of the reimbursement shall be made in accordance with the following schedule:

I.—U. S. ARMY STANDARD WEAPONS

	<i>Service- able</i>	<i>Non- serviceable</i>
1. Pistols and Revolvers, cal. .45....	P45.00	P15.00
2. Thompson Sub-Machine Guns, cal. .45	55.00	20.00
3. Grease Guns, cal. .45.....	40.00	15.00
4. Browning Automatic Rifles, cal. .30	45.00	20.00
5. U. S. Carbine, cal. .30.....	40.00	15.00
6. M-1 Garand Rifle, cal. .30.....	40.00	15.00
7. Springfield Rifle, cal. .30.....	40.00	15.00
8. Enfield Rifle, cal. .30.....	35.00	15.00
9. U. S. Trench Mortar.....	55.00	25.00
10. U. S. Bazooka.....	55.00	25.00
11. U. S. Machine Gun, cal. .30.....	55.00	25.00
12. U. S. Machine Gun, cal. .50.....	55.00	25.00
13. U. S. Hand Grenades.....	10.00	4.00
14. All ammunition for the above firearms except Bazooka and Mortar....	.10	.05
15. Bazooka and Mortar ammuni- tion	1.00	.20

II.—ENEMY WEAPONS

1. Japanese Luger Pistol, cal. 9 mm.	35.00	15.00
2. Japanese Rifle, cal. .25.....	15.00	8.00
3. Japanese Rifle, cal. .30.....	15.00	8.00
4. Japanese Auto-rifle (Wood- pecker), cal. .25.....	40.00	15.00
5. Japanese Light Machine Guns, cals. .25 and .30.....	45.00	15.00
6. Japanese Heavy Machine Gun, cal. .50	50.00	15.00
7. Japanese Knee Mortar.....	45.00	15.00
8. All ammunition for the above firearms10	.05

III.—MISCELLANEOUS WEAPONS

1. Pistols and Revolvers, cals. .22, .25, .32, .38 and 380.....	35.00	15.00
2. Shotguns, 12, 16, 20 and 410 ga.	35.00	16.00
3. Rifles, cals. 22, 30-06.....	25.00	10.00
4. Rifle-Shotgun combination, cal. 410-22	30.00	15.00
5. Ammunition for the above fire-arms10	.05

SEC. 4. The provisions of section twenty-six hundred and ninety-two of the Revised Administrative Code, as amended by Commonwealth Act Numbered Fifty-six and by Republic Act Numbered Four, shall be applicable to any person referred to in the next preceding section of this Act who shall fail to surrender the firearms described therein within the time therein provided.

SEC. 5. Any act, presidential proclamation, executive order, or regulation inconsistent with this Act is repealed.

SEC. 6. Such sum as may be necessary to carry out the purposes of this Act shall be paid out of the savings of the Department of National Defense.

SEC. 7. This Act shall take effect upon its approval.

Approved, June 11, 1950.

S. No. 20

[REPUBLIC ACT NO. 487]

AN ACT TO GIVE PROTECTION TO THE INSURING
PUBLIC AGAINST UNFAIR AND UNJUST PRAC-
TICES OF INSURANCE COMPANIES.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. It shall be unlawful for any person, company or corporation in the Philippines to act as general agent of any insurance company unless he is empowered, by a written power of attorney duly executed by such insurance company, and registered with the Office of the Insurance Commissioner to receive notices, summons and legal processes for and in behalf of the insurance company concerned in connection with actions or other legal proceedings against said insurance company. It shall be the duty of said general agent or agents to notify the Insurance Commissioner of his or their respective post office addresses in the Philippines, or any change thereof. Notices, summons or process of any kind sent by registered mail to the last registered address of such registered representative of the company concerned or to the Insurance Commissioner shall be sufficient service and deemed as if served on the insuring company itself.

Any person, company or corporation violating any provision of this section shall be punished by a fine of five hundred pesos. The Insurance Commissioner, after conviction of any person, company or corporation for violation of this section, shall revoke any certificate of authority granted to such person, company or corporation for the issuance of new policies.

SEC. 2. in case of any litigation for the enforcement of any policy other than a life insurance policy, it shall be the duty of the court to make a finding as to whether the payment of the claim of the insured has been unreasonably denied or withheld, and in the affirmative case, the insurance company shall be adjudged to pay damages which shall consist of attorney's fees and other expenses incurred by the insured person by reason of such unreasonable denial or withholding of payment plus twelve *per centum* of the amount of the claim due the insured, from the date of the filing of the case in court until the claim is fully satisfied. The lapse of two months from the occurrence of the insured risk will be considered *prima facie* evidence of unreasonable delay in payment, unless satisfactorily explained.

SEC. 3. All acts or parts of acts inconsistent with the provisions of this Act are hereby repealed.

SEC. 4. This Act shall take effect upon its approval.

Approved, June 11, 1950.

H. No. 448

[REPUBLIC ACT No. 488]

AN ACT AMENDING SECTION ONE HUNDRED AND SEVENTY-EIGHT OF ACT NUMBERED TWO THOUSAND FOUR HUNDRED AND TWENTY-SEVEN OR "THE INSURANCE ACT", AS AMENDED, AND INSERTING THEREAFTER A NEW SECTION TO BE KNOWN AS SECTION ONE HUNDRED AND SEVENTY-EIGHT-A REQUIRING FOREIGN INSURANCE COMPANIES TO INCREASE THEIR SECURITY DEPOSITS AND TO INVEST IN THE PHILIPPINES A FRACTION OF THE LEGAL RESERVES ON THE POLICIES WRITTEN THEREIN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section one hundred and seventy-eight of Act Numbered Two thousand four hundred and twenty-seven, known as "The Insurance Act", as amended, is hereby further amended to read as follows:

"SEC. 178. No foreign insurance company shall engage in business in the Philippines unless possessed of paid up unimpaired capital or assets and reserve not less than that herein required of domestic insurance companies; and no insurance company organized or existing under the government or laws other than those of the Philippines shall engage in business in the Philippines until it shall have deposited with the Insurance Commissioner for the benefit and security of its policy holders and creditors in the Philippines, securities satisfactory to the Insurance Commissioner consisting of bonds of the Government of the Philippines or of any of the branches or political subdivisions of the Philippines authorized by law to issue bonds, or of the Government in which such company is organized, or other good securities to the actual market value of two hundred and fifty thousand pesos: *Provided,*

That at least fifty *per centum* of the securities or bonds shall consist of securities of the Philippines: *Provided, further,* That foreign insurance companies already doing business in the Philippines on the date this Act becomes effective shall comply with the requirement increasing their respective deposits as provided in this Act not later than June thirty, nineteen hundred and fifty-one: *And provided, finally,* That it shall be a sufficient compliance with the provisions of this section if the deposit herein required be made with the Philippine National Bank, New York agency in the United States of America, embassies, legations or consular offices of the Philippines already established other than those in the United States or which may hereafter be established, or with a safe deposit company designated by the said Philippine National Bank, New York agency, embassies, legations or consular offices of the Philippines, which company shall agree to hold the securities so deposited subject to the control of the Philippine National Bank, New York agency, embassies, legations or consular offices of the Philippines, as the representatives of the Insurance Commissioner of the Philippines."

SEC. 2. There is inserted after section one hundred and seventy-eight of the Insurance Act a new section to be known as section one hundred and seventy-eight-A which shall read as follows:

"SEC. 178-A. Every foreign insurance company doing business in the Philippines shall set aside at least thirty *per centum* of the legal reserves of the policies written in the Philippines and invest and keep the same therein in accordance with the provisions of this Act: *Provided, however,* That of the legal reserves as of December thirty-one, nineteen hundred and forty-nine, at least ten *per centum* shall have been invested and kept in the Philippines by December thirty-one, nineteen hundred and fifty; of the legal reserves as of December thirty-one nineteen hundred and fifty, at least twenty *per centum* shall have been invested and kept therein by December thirty-one, nineteen hundred and fifty-one; and of the legal reserves as of December thirty-first of each year after nineteen hundred and fifty, at least thirty *per centum* shall have been invested and kept in the Philippines by the end of the following year: *Provided, further,* That in determining the amount to be invested and kept in the Philippines under this section, a company shall be given credit for the amount of securities of the Philippines deposited by such company under section one hundred and seventy-eight of this Act, as amended: *And provided, finally,* That the securities purchased and kept in the Philippines under this section shall not be sent out of the territorial jurisdiction of the Philippines without the written consent of the Commissioner."

SEC. 3. The Insurance Commissioner is hereby empowered to prescribe such rules and regulations as may be necessary to carry out the purposes of this Act.

SEC. 4. This Act shall take effect upon its approval.

Approved, June 11, 1950.

H. No. 1029

[REPUBLIC ACT No. 489]

AN ACT TO AMEND THE INSURANCE LAW WITH
RESPECT TO THE LOANS AND PROPERTY OF
INSURANCE CORPORATIONS AND TO AUTHOR-
IZE LIFE INSURANCE COMPANIES TO INVEST
IN HOUSING AND REAL ESTATE PROJECTS.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. Section one hundred ninety-seven of Act Numbered Two thousand four hundred twenty-seven as amended by Republic Act Numbered Two hundred seventy-three, is amended to read:

"SEC. 197. No insurance corporation shall loan any of its money or deposits to any person, corporation or association, except upon first mortgages or deeds of trust of unencumbered, improved or unimproved real estate, in cities and centers of population of municipalities in the Philippines when the amount of such loan is not in excess of sixty *per centum* of the market value of such real estate; or upon the security of first mortgages or deeds of trust of actually cultivated, improved and unencumbered agricultural lands in the Philippines when the amount of such loans is not in excess of forty *per centum* of the market value of such land; or upon the purchase money mortgages or like securities received by it upon the sale or exchange of real property acquired pursuant to section two hundred or section two hundred-A of this Act; or upon bonds or other evidences of debt of the Government of the Philippines or its political subdivisions authorized by law to issue bonds, or upon bonds or other evidences of debt of government-owned or controlled corporations and instrumentalities including the Central Bank; or upon obligations issued or guaranteed by the International Bank for Reconstruction and Development; or upon stocks, bonds or other evidences of debt as are specified in section two hundred of this Act: *Provided, however,* That a life insurance corporation may lend to any of its policyholders upon the security of the value of its policy a sum not exceeding the legal reserve which it is required to maintain thereon: *Provided, further,* That no loan upon the security of real estate shall have a maturity in excess of fifteen years: *And provided, finally,* That where such loans upon the security of real estate are granted for a period longer than five years, payments thereof shall be made in monthly, quarterly, semi-annual or annual installments.

"The phrase 'improved real estate' used above is hereby defined to mean land with permanent building or buildings erected or being erected thereon. In case the building or buildings on the land do not belong to the owner of the latter, no loan shall be granted on the security of the real estate in question unless both the owner of the building or buildings and the owner of the land sign the deed of mortgage, and unless the owner of the land is the Government of the Philippines or one of its political subdivisions, in which event the owner is not required to sign the deed of mortgage."

SEC. 2. Section two hundred of the same Act, as amended by Republic Act Numbered Two hundred seventy-three is hereby further amended to read as follows:

"SEC. 200. (1) An insurance corporation, domestic or foreign, may purchase, hold, own and convey such property, real and personal, as may have been mortgaged, pledged, or conveyed to it in good faith in trust for its benefit by reason of money loaned by it in pursuance of the regular business of the corporation, and such real or personal property as may have been purchased by it at sales under pledges, mortgages or deeds of trust for its benefit on account of money loaned by it; and such real and personal property as may have been conveyed to it by borrowers in satisfaction and discharge of loans made by the corporation to them: *Provided, however,* That in the case of any foreign insurance corporation, any real estate purchased by said corporation in payment or by reason of any loan made by said corporation shall be sold by the corporation within twenty years after the title thereto has been vested in it.

"(2) Insurance corporations may purchase, hold, own and convey real and personal property as follows:

"(a) The lot with the building thereon in which the corporation conducts and carries on its business.

"(b) Bonds and other evidences of debt of the Government of the Philippines or its political subdivisions authorized by law to issue bonds at the reasonable market value thereof.

"(c) Bonds or other evidences of debt of government-owned or controlled corporations and entities, including the Central Bank.

"(d) Bonds, debentures or other evidences of indebtedness of any solvent corporation or institution created or existing under the laws of the Philippines: *Provided, however,* That the issuing, assuming or guaranteeing entity or its predecessors shall not have defaulted in the payment of interest on any of its securities and that during each of any three including the last two of the five fiscal years next preceding the date of acquisition by such insurance corporation of such bonds, debentures or other evidences of indebtedness, the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges, as hereinafter defined, shall have been not less than one and one-quarter times the total of its fixed charges for such year: *And provided, further,* That no life insurance company shall invest in or loan upon the obligations of any one institution in the kinds permitted under this subsection an amount in excess of twenty-five *per centum* of the total admitted assets of such insurer as of December thirty-first next preceding the date of such investment.

"As used in this subsection the term 'net earnings available for fixed charges' shall mean net income after deducting operating and maintenance expenses, taxes other than income taxes, depreciation and depletion, but excluding extraordinary non-recurring items of income or expense appearing in the regular financial statement of the issuing, assuming or guaranteeing institution. The term 'fixed charges' shall include interest on funded and unfunded debt, amortization of debt discount, and rentals for leased properties.

“(e) Preferred or guaranteed stocks of any solvent corporation or institution created or existing under the laws of the Philippines: *Provided, however,* That the issuing, assuming or guaranteeing entity or its predecessors has paid regular dividends upon its preferred or guaranteed stocks for a period of at least three years next preceding the date of investment in such preferred or guaranteed stocks: *Provided, further,* That if the stocks are guaranteed, the amount of stocks so guaranteed is not in excess of fifty *per centum* of the amount of the preferred or common stocks, as the case may be, of the guaranteeing corporation: *And provided, finally,* That no life insurance company shall invest in or loan upon obligations of any one institution in the kinds permitted under this subsection an amount in excess of ten *per centum* of the total admitted assets of such insurer as of December thirty-first next preceding the date of such investment.

“(f) Common stocks of any solvent corporation or institution created or existing under the laws of the Philippines upon which regular dividends shall have been paid for the three years next preceding the purchase of such stocks: *Provided, however,* That no life insurance company shall invest in or loan upon the obligations of any one corporation or institution in the kinds permitted under this subsection an amount in excess of ten *per centum* of the total admitted assets of such insurer as of December thirty-first next preceding the date of such investment.

“(g) Certificates, notes and other obligations issued by trustees or receivers of any institution created or existing under the laws of the Philippines which, or the assets of which, are being administered under the direction of any court having jurisdiction: *Provided, however,* That such certificates, notes or other obligations are adequately secured as to principal and interest.

“(h) Equipment trust obligations or certificates which are adequately secured or other adequately secured instruments evidencing an interest in equipment wholly or in part within the Philippines: *Provided, however,* That there is a right to receive determined portions of rental, purchase or other fixed obligatory payments for the use or purchase of such equipment.

“(i) Any obligation of a corporation or institution created or existing under the laws of the Philippines which is, on the date of acquisition by the insurer, adequately secured and has qualities and characteristics wherein the speculative elements are not predominant.

“(j) Such other securities as may be approved by the Insurance Commissioner.

“(3) Any domestic insurer which has outstanding insurance, annuity or reinsurance contracts in currencies other than the National currency of the Philippines may invest in, or otherwise acquire or loan upon securities and investments in such currency which are substantially of the same kinds, classes and investment grades as those eligible for investment under the foregoing subdivisions of this Act; but the aggregate amount of such investments and of cash in such currency which is at any time held by such insurer shall not exceed one and one-half times the amount of its reserves and other obligations under such contracts or the amount which such insurer is required by the law of any country or possession outside

the Republic of the Philippines to invest in such country or possession, whichever shall be greater."

SEC. 3. Act Numbered Two thousand four hundred twenty-seven, as amended by Republic Act Numbered Two hundred seventy-three, is hereby further amended by inserting between sections two hundred and two hundred one thereof the following new section:

"SEC. 200-A. Any life insurance company may:

"(a) Acquire or construct housing projects and, in connection with any such project, may acquire land or any interest therein by purchase, lease or otherwise, or use land acquired pursuant to any other provision of this Act. Such companies may thereafter own, maintain, manage, collect or receive income from, or sell and convey, any land or interest therein so acquired and any improvements thereon. The aggregate book value of the investments of any such company in all such projects shall not exceed at the time of such investment twenty-five *per centum* of the total admitted assets of such company on the thirty-first day of December next preceding.

"(b) Acquire real property, other than property to be used primarily for providing housing and property for accommodation of its own business, as an investment for the production of income, or may acquire real property to be improved or developed for such investment purpose pursuant to a program therefor, subject to the following condition and limitation: the cost of each parcel of real property so acquired under the authority of this paragraph (b), including the estimated cost to the company of the improvement or development thereof, when added to the book value of all other real property held by it pursuant to this paragraph (b), shall not exceed twenty-five *per centum* of its admitted assets as of the thirty-first day of December next preceding."

SEC. 4. This Act shall take effect upon its approval.

Approved, June 11, 1950.

S. No. 31

[REPUBLIC ACT No. 490]

AN ACT AMENDING SECTIONS TWENTY-ONE HUNDRED AND EIGHTY-SEVEN AND TWENTY-SIX HUNDRED AND FIFTEEN (f) OF THE ADMINISTRATIVE CODE BY GRADUATING THE COMPENSATION OF VICE-MAYORS AND COUNCILORS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The first paragraph of section twenty-one hundred and eighty-seven of the Administrative Code is hereby amended to read as follows:

"SEC. 2187. *Compensation of vice-mayor and councilors—Full pay for sick mayor.*—The municipal council may, with the approval of the provincial board, grant to the vice-mayor and each councilor a per diem not to exceed ten pesos in municipalities of the first class; eight pesos in municipalities of the second class; six pesos in the municipalities of the third class; and four pesos in the fourth

and fifth class municipalities, for each day of regular session of the council actually attended by them. When, by reason of absence, suspension, or other disability, the mayor ceases to discharge the duties of his office the vice-mayor or councilor acting as mayor shall receive compensation equivalent to the salary of the mayor during the period of such service."

SEC. 2. Section twenty-six hundred and fifteen (f) of the Administrative Code is hereby amended to read as follows:

"SEC. 2615(f). *Compensation of vice-mayor and councilors.*—The municipal council of a municipality of specially organized province or of a municipal district of any province may, with the approval of the provincial board, grant to the vice-mayor and each councilor a per diem not to exceed ten pesos in municipalities of the first class; eight pesos in municipalities of the second class; six pesos in the municipalities of the third class; and four pesos in the fourth and fifth class municipalities, for each day of regular session of the council actually attended by them. When, by reason of absence, suspension, or other disability the mayor ceases to discharge the duties of his office, the vice-mayor or councilor acting in his stead shall receive compensation equivalent to the salary of the mayor during the period of such service."

SEC. 3. This Act shall take effect upon its approval.

Approved, June 12, 1950.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

DEPARTMENT OF THE INTERIOR

PROVINCIAL CIRCULAR
(Unnumbered)

June 30, 1950

**EXECUTIVE ORDER NO. 321, PRESCRIBING THE CODE
OF THE NATIONAL FLAG AND THE NATIONAL
ANTHEM OF THE REPUBLIC OF THE PHILIPPINES—**

To all Provincial Governors and City Mayors:

In order to "inculcate in the minds of our people a just pride in their native land," the President of the Philippines in Executive Order No. 321, series of 1950, has prescribed the code of the National Flag and the National Anthem of the Republic of the Philippines.

Copies of this Executive Order are being sent to you under separate cover for distribution among the local officials under your jurisdiction and dissemination of the information therein contained as widely as possible in their respective communities.

It is urged that the respect and reverence for our National Flag and our National Anthem be constantly observed and implanted in the minds of our people through exemplary conduct of the officials and employees of the Government. It is suggested that in order that the people may gain full enlightenment on the significance of our nationhood, the aforementioned code be regularly taken up and discussed in community assemblies and other public gatherings.

N. ROXAS
Undersecretary of the Interior

PROVINCIAL CIRCULAR
(Unnumbered)

July 1, 1950

AVAILABILITY OF ENRICHED RICE THRU THE NARIC

To all Provincial Governors and City Mayors:

Quoted hereunder are the pertinent portions of a self-explanatory letter dated June 7, 1950, of the President-Chairman of the National Rice and Corn Corporation (NARIC) addressed to the Acting Secretary of the Department of Economic Coordination and received in this Office by reference from the Office of the President:

"I am glad to report that the rice enrichment plant was formally opened this morning. The NARIC, in view of the official opening

of this plant is now in a position to supply all the enriched rice requirement in the Philippines.

"Enriched rice has been proved through extensive experiment to be effective in the eradication of diseases due to dietary deficiencies particularly beri-beri which is considered to be the number two most dreaded disease in the Philippines. In order to help in the eradication of diseases due to dietary deficiencies like beri-beri, I recommend therefore, that proper representation be made so that all government offices and entities, charitable institutions and offices needing rice for consumption be instructed to use enriched rice.

"We feel that the Corporation needs the cooperation and help of all government offices and entities in order to generalize the consumption of enriched rice in connection with the general campaign for the eradication of disease due to dietary deficiencies like beri-beri. We feel confident that in a short time beri-beri will be eradicated through the extensive use of this enriched rice.

"I beg leave, therefore, to suggest that this recommendation be brought to the attention of His Excellency, the President for proper instructions or directives to the various government offices, entities and other institutions."

It is requested that the contents hereof be disseminated as widely as possible.

N. ROXAS
Undersecretary of the Interior

PROVINCIAL CIRCULAR
(Unnumbered)

July 6, 1950

**MEMBERS OF THE PROVINCIAL GUARDS AND LOCAL
POLICE FORCES—SUSPENSION OR REMOVAL OF**

*To all Provincial Governors,
The Chief Constabulary:*

For the information and guidance of all concerned there are quoted hereunder the provisions of Republic Act No. 557, approved on June 17, 1950, entitled "An Act providing for the suspension or removal of members of the Provincial Guards, City Police and Municipal Police by the Provincial Governor, City Mayor or Municipal Mayor," which is self-explanatory:

"SECTION 1. Members of the provincial guards, city police and municipal police shall

not be removed and, except in cases of resignation, shall not be discharged except for misconduct or incompetency, dishonesty, disloyalty to the Philippine Government, serious irregularities in the performance of their duties, and violation of law or duty, and in such cases, charges shall be preferred by the provincial governor in matters against any member of the provincial guards, the city mayor in cases against a member of the city police, and the municipal mayor in cases involving a member of the municipal police, and investigated by the provincial board, the city or municipal council, as the case may be, in public hearing, and the accused shall be given opportunity to make their defense. In every such case filed, a copy of the charges shall be furnished the accused by the said provincial governor, city mayor or municipal mayor personally or by registered mail, within five days from the date of the filing of the charges, and the investigating body shall try the case within ten days from the date the accused has been notified of the charge, unless the accused, for good reasons, shall ask for a longer period to prepare his defense. The trial of the case shall be finished within a reasonable time, and the investigating body shall decide the case within fifteen days from the time the case is submitted for decision.

"SEC. 2. In all these cases, the decision of the provincial board, the city or municipal council shall be appealable to the Commissioner of Civil Service.

"The appellant shall exercise the right to appeal by filing with the provincial governor, the city mayor or the municipal mayor as the case may be, a written appeal within fifteen days from the date he has been notified of the decision. If within this said period of fifteen days no appeal is taken, the decision shall stand final and the Commissioner of Civil Service shall be duly furnished with a copy of the order of suspension or removal. In case of appeal, the provincial governor, the city mayor or the municipal mayor to whom the appeal is filed shall forward the case with all its records to the Commissioner of Civil Service within twenty days from the receipt of the appeal, and the Commissioner of Civil Service shall render decision thereon within a reasonable time and his decision shall be final.

"SEC. 3. When charges are filed against a member of the provincial guards, city police or municipal police under this Act, the provincial governor, city mayor or municipal mayor, as the case may be, may suspend the accused, and said suspension to be not longer than sixty days. If during the period of sixty days, the case shall not have been decided finally, the accused, if he is suspended, shall *ipso*

facto be reinstated in office without prejudice to the continuation of the case until its final decision, unless the delay in the disposition of the case is due to the fault, negligence, or petition of the accused, in which case the period of the delay shall not be counted in computing the period of suspension herein provided.

"SEC. 4. When a member of the provincial guards, city police or municipal police is accused in court of any felony or violation of law by the provincial fiscal or city fiscal, as the case may be, the provincial governor, the city mayor or the municipal mayor shall immediately suspend the accused from office pending the final decision of the case by the court and, in case of acquittal, the accused shall be entitled to payment of the entire salary he failed to receive during the suspension.

"SEC. 5. The municipal mayor is hereby empowered to suspend any municipal chief of police for cause mentioned in sections one and four of this Act and in such cases it shall be the duty of the municipal mayor to report the fact of suspension to the municipal council for investigation in the manner and form provided for in sections one and two of this Act.

"SEC. 6. The provisions of law and executive orders inconsistent with this Act are hereby repealed and modified.

"SEC. 7. This Act shall take effect upon its approval."

In view hereof, all pending administrative cases before Provincial Commanders, PC, against all members of provincial guards and members of the local police forces hereinabove mentioned, and all administrative charges that may hereafter be filed against the said provincial guards and members of the police forces shall be referred to the proper officials, boards, or councils for disposition as hereinabove provided.

It is desired that the contents of this circular be forthwith transmitted to all officials concerned under your jurisdiction for their information and guidance and the matter given the widest publicity possible.

N. ROXAS

Undersecretary of the Interior

PROVINCIAL CIRCULAR
(Unnumbered)

July 19, 1950

SUBMISSION OF ANNUAL REPORTS FOR THE FISCAL
YEAR ENDING JUNE 30, 1950

To all *Provincial Governors and City Mayors*:

This is to remind you of the submission to this Office as early as practicable after July 1 this year

of an Annual Report covering the activities of your Province or City for the period from July 1, 1949 to June 30, 1950, as required by sections 574 and 575 of the Revised Administrative Code and Commonwealth Act No. 373. As in previous years, please submit your Annual Reports in quintuplicate.

Annual reports of municipal and municipal district mayors should be submitted to the Provincial Governors concerned and not to the Secretary of the Interior.

N. ROXAS

Undersecretary of the Interior

DEPARTMENT OF JUSTICE

ADMINISTRATIVE ORDER No. 87

June 29, 1950

AUTHORIZING THE PRESIDING JUDGE OF THE FIRST BRANCH OF THE COURT OF FIRST INSTANCE OF PANGASINAN TO TRY AT LINGAYEN A CERTAIN CIVIL CASE.

In the interest of the administration of justice and pursuant to the last paragraph of Administrative Order No. 173 of this Department, dated September 20, 1948, the judge presiding over the First Branch of the Court of First Instance of Pangasinan is hereby authorized to try at Lingayen, civil case No. 9341 of the Court of First Instance of Pangasinan, Tayug Branch, entitled, "Teresa Bibat *vs.* Alejo Bibat et al.," and to enter final judgment therein.

RICARDO NEPOMUCENO

Secretary of Justice

ADMINISTRATIVE ORDER No. 88

June 30, 1950

DESIGNATING SENIOR CLERK TEODORICO GATON OF THE OFFICE OF THE REGISTER OF DEEDS OF ILOILO PROVINCE TO ACT AS REGISTER OF DEEDS THEREOF UNTIL FURTHER ORDERS.

In the interest of the public service, and pursuant to the provisions of section 201(d) of the Administrative Code, as amended by Republic Act No. 164, Mr. Teodorico Gaton, senior clerk in the office of the register of deeds for the province of Iloilo, is hereby designated to act as Register of Deeds for said province beginning July 10, 1950, during the absence of the regular incumbent, or until further orders.

RICARDO NEPOMUCENO

Secretary of Justice

ADMINISTRATIVE ORDER No. 89

July 7, 1950

AUTHORIZING JUDGE-AT-LARGE GABINO ABAYA TO DECIDE IN MANILA CERTAIN CIVIL CASES

In the interest of the administration of justice, the Honorable Gabino Abaya, Judge-at-Large, is

hereby authorized to decide in Manila beginning July 8, 1950, civil case No. 5191 entitled "Felisa de los Santos *vs.* Germiniano Gonzales et al." and civil case No. 5041 entitled, "Hilarion Cruz *vs.* Fernando Villa-Abrille" of the Court of First Instance of Tarlac.

RICARDO NEPOMUCENO

Secretary of Justice

ADMINISTRATIVE ORDER No. 90

July 7, 1950

AUTHORIZING JUDGE CLEMENTINO V. DIEZ OF THE THIRTEENTH JUDICIAL DISTRICT, LEYTE, SECOND BRANCH, TO HOLD COURT IN THE MUNICIPALITIES OF CABALIAN, ANAHAWAN, HINUNDAYAN, HINUNANGAN, AND ILOAN, LEYTE.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Clementino V. Diez, Judge of the Thirteenth Judicial District, Leyte, second branch, is hereby authorized to hold court during the month of September, 1950, in the municipality of Cabalian, Province of Leyte, for the purpose of trying all kinds of cases coming from said municipality and the municipalities of Anahawan, Hinundayan, Hinunangan and Liloan, same province, and to enter final judgments therein.

RICARDO NEPOMUCENO

Secretary of Justice

ADMINISTRATIVE ORDER No. 91

July 13, 1950

AUTHORIZING JUDGE-AT-LARGE TEODORO CAMACHO TO HOLD COURT IN NUEVA ECIJA

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Teodoro Camacho, Judge-at-Large, is hereby authorized to hold court in the Province of Nueva Ecija beginning July 17, 1950 or as soon thereafter as practicable, for the purpose of trying all kinds of cases and to enter final judgments therein.

RICARDO NEPOMUCENO

Secretary of Justice

DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

BUREAU OF FISHERIES

FISHERIES ADMINISTRATIVE ORDER No. 23

July 26, 1948

REGULATIONS ESTABLISHING A CLOSED SEASON PERIOD FOR THE CONSERVATION OF TURTLES, TURTLE EGGS, AND TURTLE SHELLS IN THE TURTLE ISLANDS.

Pursuant to the provisions of section 79 (B) of the Administrative Code, to sections 4, 7, 8, and

9 of Act No. 4003, as amended and to Republic Act No. 177, and for the protection and conservation of turtles, turtle eggs and turtle shells, in the Turtle Islands, Philippines, the following rules and regulations are hereby promulgated for the information and guidance of all concerned:

1. *Closed Season Period.*—A closed season period is hereby established for the gathering of turtles, turtle eggs, and turtle shells, living, laid or deposited in the Turtle Islands, covering the period of four months beginning May first to August thirty-first of the year or years hereinbelow indicated opposite the respective names of the Islands comprising the Turtle Islands, the said closed season period to continue in rotation after the expiration of every seven years duration, to wit:

1st year, Taganak Island	1948
2nd year, Baguan Island	1949
3rd year, Liniman Island	1950
4th year, Langaan Island	1951
5th year, Roaan Island	1952
6th year, Great Bakkungaan Island	1953
7th year, Sibauang Island	1954

2. *Prohibitions:*

(a) During the above-mentioned periods the gathering or collection of turtles, turtle eggs and turtle shells in any of the islands hereinabove indicated is prohibited:

(b) Except for the purpose provided for in paragraph 3 hereof, it shall be unlawful for any person, association, or corporation to gather, take, kill or catch, or cause to be gathered, taken, killed or caught, sell, offer or expose for sale, any species of turtles, turtle eggs or turtle shells in or from the Turtle Islands and its jurisdictional waters during any time or period of each year, unless a license or permit is secured from the Bureau of Fisheries.

3. *Exemptions.*—For scientific, educational or propagation purposes, any person, association, institution or corporation of good repute may be granted, free of charge by the Director of Fisheries subject to the approval of the Secretary of Agriculture and Natural Resources, permit to catch turtles or to collect or gather turtle eggs, or cause to be caught or gathered turtles, turtle eggs or turtle shells, including any species of turtles, turtle eggs or turtle shells, subject to such conditions as the Director of Fisheries or the Secretary of Agriculture and Natural Resources may deem advisable to impose for the proper protection and conservation of the turtles, turtle eggs or turtle shells, and their by-products.

4. *Penalty.*—Any violation of any of the provisions of this Administrative Order shall subject the offender to prosecution and upon conviction, shall suffer the penalty provided in section 83, of Act 4003, the Fisheries Act, as amended, which is a fine of not more than two hundred pesos, or imprisonment for not more than six months, or both such fine and imprisonment, in the discretion

of the court. In addition to the penalty which the Court may impose, turtles caught, turtle eggs gathered or turtle shells taken shall be confiscated by the government and any permit or license issued, therefor shall be revoked by the Director of Fisheries.

5. *Effectivity.*—This Administrative Order shall take effect upon its approval.

MARIANO GARCHITORENA
Secretary of Agriculture and
Natural Resources

Recommended by:

D. V. VILLADOLID
Director of Fisheries

Approved: October 4, 1948

By authority of the President:

TEODORO EVANGELISTA
Executive Secretary

FISHERIES ADMINISTRATIVE ORDER No. 24-1

July 8, 1950

AMENDING SECTION 2 OF FISHERIES ADMINISTRATIVE ORDER NO. 24, GOVERNING THE SCIENTIFIC EXAMINATION OF FISH CAUGHT, AND FOR OTHER PURPOSES.

SECTION 1. Section 2 of Fisheries Administrative Order No. 24 is hereby amended to read as follows:

"2. *Sample of fish.*—The licensee or in his absence, his duly authorized representative or the captain (patron) of the boat shall be present in the unloading of fish from the fishing boat to the landing area and shall allow the representatives of the Bureau of Fisheries or other authorized agents of the Government to secure samples of fish carried in the holds of the fishing boat for scientific examination, who shall issue the corresponding receipt therefor in the prescribed B. F. Form No. 7(d). It shall be the duty of the licensee or in his absence, his duly authorized representative or the captain (patron) of the boat to make a written certification on the duplicate of said receipt that the fish samples stated therein were the ones taken by the Government agents from the holds of said boat.

"For the purpose of this section, the licensee shall register with the Bureau of Fisheries the names of his authorized agents who shall act for him in his absence, the patron or captain of the boat he is operating, and shall notify the said Bureau of any change thereof at least one day prior to such change.

SEC. 2. This Administrative Order shall take effect sixty days after its publication in the Official Gazette.

PLACIDO L. MAPA
Secretary of Agriculture and
Natural Resources

Recommended by:

D. V. VILLADOLID
Director of Fisheries

DEPARTMENT OF PUBLIC WORKS AND COMMUNICATIONS

BUREAU OF TELECOMMUNICATIONS

ADMINISTRATIVE ORDER No. 1

June 10, 1950

USE OF CERTAIN AUTHORIZED COMBINATIONS OF WORDS IN PRESS MESSAGES

As a general rule, two or more dictionary words combined together are counted as so many sep-

arate words in telegrams; but as an exception, there are words and expressions that are used in press messages and are counted and charged for as one word. We have noticed that there are offices that count and charge such authorized combinations as one word, while other offices charge them as two. In order to avoid confusion and for the purpose of uniformity in counting, there are shown hereunder the combinations of words or expressions that are authorized for use in press messages:

Letter or word combination	Meaning	How used
S	This	smorning (this morning), safternoon (this afternoon), snoon (this noon).
WARD	for	Quirino motored Cebuward snoon.
WARDED	left for	Quirino Manilawarded smorning.
STATEMENTED ..	issued a statement	Cuenco statemented denying Lopez claim, etc.
POST	after	Cebu agog postshooting.
SUB	placed under	Cebu cops placed subconstabulary.
SUPRA	over	Plane exploded suprailoilo city.
ET	and	Perez etparty Manilawarded snoon.
OUTPOINTED	pointed out	Quirino outpointed importance emergency powers.
WHOVE	who have	Veterans whove collected backpay, etc.
PAR	by	Order signed parquirino snoon.
RE	regarding	Officials conferred restrike.
ING	will	Troops launching drive tomorrow.
ENTRAINED	took a train	Quirino etparty entrained snoon.
ENPLANED	took a plane	Cuenco enplaned smorning.
CUM	with	Lacson faction joined cummontelibano group.
SANS	without	Ceremony held sanshitch.
EX	from	Firing exmuntinlupa heard here.

The following will illustrate how the above combinations of words may be used:

21 COLLECT PRESS

CEBU JUNE 10, 1950
"TIMES MANILA

REFUGEES EXLUUK ARRIVED SMORING
REPORTED KILLING TWO BANDIT CHIEFS
PARCONSTABULARY STOP MOROS AMINULA
ETSARAIL CUMGARAND ETMACHINGEGUNS.
GARCIA"

It should be borne in mind however, that only correspondents duly authorized by the respective editors or business managers of newspapers, periodical publications, or news agencies are entitled to this privilege of using such combinations of words in their press dispatches.

R. TOLENTINO

Acting Director of Telecommunications

Approved June 12, 1950.

PROSPERO C. SANIDAD

Secretary of Public Works and
Communications

ADMINISTRATIVE ORDER No. 2

June 22, 1950

NEW RATES ON INTERNATIONAL TELEGRAMS BEGINNING JULY 1, 1950

Effective July 1, 1950 the rates of the Bureau of Telecommunications on international messages originating from foreign countries addressed to my point in the Philippines and vice versa, including radiomarine messages to and from ships at sea, shall be as follows:

- (a) Ordinary telegrams (plain-language, code and/or cipher) P0.15 per word;
- (b) Letter telegrams P0.08 per word;
- (c) Press messages P0.05 per word.

There shall be a minimum of 5 words on ordinary telegrams, 22 words on letter telegrams and 10 words on press messages.

CDE and DEFERRED telegrams shall be abolished beginning July 1, 1950.

The sender or the addressee of a private telegram must prove his identity when requested to do so by the office of origin office of destination.

The office of origin may require the sender to write on the telegram form his full name and complete address.

Urgent telegrams take precedence in the order of transmission. The indicator "URGENT" shall be written immediately before the address and counted and charged for as one word. The charge for this class of traffic shall be double that of ordinary telegrams of the same length with a minimum of 5 words.

PLAIN LANGUAGE

1. Plain language is that which presents an intelligible meaning in one or more of the language admitted for international telegraph correspondence, each word and each expression having the meaning normally assigned to it in the language to which it belongs.

2. By telegrams in plain language are meant those of which the text is wholly in plain language. The character of a telegram in plain language is not changed by the presence of:

- (a) numbers written in letters or figures, of groups composed either of letters or of figures provided that these numbers and groups have no secret meaning;
- (b) arbitrary or abbreviated addresses;
- (c) commercial marks, trade marks, designations of goods, arbitrary technical terms used to denote machines or parts of machines, reference numbers or indications, and other expressions of the same kind, provided that these marks, designations, technical terms, reference numbers or indications, and expressions are shown in a catalogue available to the public, or in a price list, invoice, bill of lading or similar document. These marks, designations, terms and expressions, reference numbers or indications may, exceptionally, be composed of letters, figures, and signs;
- (d) exchange or market quotations;
- (e) groups representing meteorological observations or forecasts;
- (f) abbreviated expressions in current use in ordinary or commercial correspondence, such as fob ("free on board"), cif ("cost insurance freight"), caf ("cost assurance freight"), svp ("s'il vous plait"), or any similar expression;
- (g) a single check word or check number placed at the beginning of the text and not exceeding five letters or five figures in length.

3. The text of telegrams originating in or destined for China may be expressed wholly by means of groups of four figures taken from the official telegraph dictionary of the Chinese Administration.

SECRET LANGUAGE

1. Secret language is formed of:

- (a) artificial words composed exclusively of letters; such words must not exceed five letters in length;
- (b) real words not used with the meaning normally assigned to them in the language to which they belong, and consequently not forming intelligible phrases in one or more of the languages admitted for telegraph correspondence in plain language;
- (c) Arabic figures, groups or series of Arabic figures having a secret meaning;
- (d) words, names, expressions or combinations of letters not fulfilling the conditions laid down for plain language;
- (e) a mixture of the words and expressions mentioned under paragraphs (a) to (d) above.

2. Words in secret language may not contain the accented letter 'é'.

3. A combination of figures and letters, figures or letters and signs with a secret meaning, within a single group, shall not be admitted.

4. The groups indicated under plain-language paragraph 2 thereof, shall not be considered as having a secret meaning.

5. By secret language telegrams are meant those containing in their text one or more words in secret language.

6. Telegrams in secret language shall be charged at the *ordinary* or *urgent* rate as the case may be.

PRESS TELEGRAMS

Conditions of Acceptance

1. Telegrams of which the text consists of information and news intended either for publication in newspapers and other periodical publications or for radio broadcasting, shall be admitted as press telegrams. Press telegrams must bear, at the beginning of the address, the paid service indication—press—written by the sender. Press telegrams must not contain any passage, advertisement or communication having the character of private correspondence nor any advertisement or communication for the insertion or radio broadcasting or which a charge is made. Further, they must not contain any advertisement which is inserted or broadcast free of charge.

2. Press telegrams shall be accepted from authorized representatives of newspapers, periodical publications, Government or press news agencies or bureaus, or authorized radio broadcasting companies, organizations or stations. The sender of a press telegram may be required to register as the accredited correspondent of the addressee and cards of identification may be issued by the Director of Telecommunications in the case of press messages filed in any of the telecommunication offices ad-

dressed to foreign countries without which, the telegram should not be accorded press rates.

3. Press telegrams may be addressed only to the entities mentioned in paragraph 1 above, and solely in such names, and not in the name of a person connected in any capacity whatever with any of such entities. They must contain only matter intended for publication or radio broadcasting and instructions relative to the publication or radio broadcasting of such matter. Any such instruction must be written between brackets (parentheses) either at the beginning or the end of the text. The total number of words contained in the instructions relating to a single telegram may not be more than 10 per cent of the number of chargeable words in the text or exceed twenty words in all. The bracket (parentheses) shall be charged for, but they shall not be included in the number of words contained in the instructions relative to the publication or broadcasting of the telegrams.

4. The use of registered addresses shall be authorized.

5. (a) In press telegrams, only the following special services may be admitted: urgent, x addresses. The corresponding paid service indications (-Urgent-(rush)); -TMx- ("x addresses"); -CTA- ("communicate all addresses") shall be charged for at the reduced rate.

(b) In multiple press telegrams all the addresses must fulfil the conditions required in paragraph 1 above.

6. The charge per word to be collected for an urgent press telegram shall be the same as the charge per word collected for an ordinary private telegram over the same route.

7. The minimum number of chargeable words for press telegrams shall be fixed at ten.

8. The copying fee for multiple press telegrams shall be the same as for ordinary private multiple telegrams.

Language Admissible in Press Telegrams

1. Press telegrams must be expressed in plain language, in one of the languages admitted for international telegraph correspondence in plain language, chosen from among the following languages:

- (a) the French language;
- (b) the language of the newspaper, periodical publication or news agency bulletin to which the telegram is addressed or the language in which the radio broadcast is carried on;
- (c) the national language or languages of country of origin or the country of destination;
- (d) one or more additional languages which may be designated by the offices of origin or the offices of destination as being

used in the territory of the country to which they belong.

The sender of a press telegram may be required to furnish proof that there is a newspaper, periodical publication or news agency bulletin in the country of destination of the telegram published in the language chosen or that the radio broadcast is carried out in this language.

2. The languages mentioned in paragraph 1 above may be used for quotations together with the language in which the telegram is expressed.

3. Press telegrams must not contain any passage, advertisement or communication having the character of private correspondence nor any advertisement or communication for the insertion or radio broadcasting of which a charge is made. Further, they must not contain any advertisement which is inserted or broadcast free of charge.

4. (a) Stock exchange and market quotations, results of sporting events and meteorological observations and forecasts, with or without explanatory text, shall be admitted in press telegrams.

(b) In case of doubt, the office of origin must satisfy itself that the groups of figures appearing in the telegrams really represents stock exchange and market quotations, results or sporting events or meteorological observations and forecasts by inquiry of the sender, who shall be bound to establish the fact.

LETTER TELEGRAMS

1. Letter telegrams shall be distinguished by the paid service indicator LT.

2. (1) Letter telegrams sent by one of the authorities mentioned hereunder or replies to telegrams sent by those authorities, may bear the paid service indicator-LTF-.

- (a) the Head of a State;
- (b) the Head of a Government and members of a Government;
- (c) the Head of a Colony, Protectorate, overseas territory or territory under suzerainty, authority, trusteeship or mandate or a Member or Associate Member or of the United Nations;
- (d) Commanders-in-Chief of Military Forces (land, sea or air);
- (e) Diplomatic or Consular Agents;
- (f) the Secretary General of the United Nations and the Heads of the subsidiary organs of the United Nations;
- (g) the International Court of Justice at the Hague.

(2) Letter telegrams bearing the paid service indicator -LHF- shall enjoy the same rate and shall be subject, as regards acceptance, transmission and delivery, to the same conditions as letter telegrams bearing the paid service indicator -LT-.

3. As regards acceptance, transmission and delivery, letter telegrams shall be subject to the limitations set forth hereunder:

- (a) Radiotelegrams and semaphore telegrams shall not be admitted as letter telegrams.
- (b) Registered addresses may be used in the address of letter telegrams.
- (c) However, in a money order telegram or a postal cheque telegram transmitted as a letter telegram the amount of the money order or postal cheque may be replaced officially by code words.

4. (a) If asked to do so by the office of origin, the sender must sign on the telegram form a declaration categorically stating that the text is expressed wholly in plain language and bears no meaning other than that which appears on the face of it. The declaration must indicate the language or languages in which the telegram is expressed.

(b) In the case of money order telegrams and postal cheque telegrams the declaration is required only if the official text is followed by a private message.

5. (a) The only special services admitted in letter telegrams shall be the following: prepaid reply, faire suivre, redirection to any other address, x addresses, communicate all addresses, post, registered post, poste restante, telegraph restant and de luxe telegrams. The corresponding paid service indications: (-RPx, -FS-, -Réexpédié de x-, -TMX-, -CTA-, -poste-, -PR-, -GP-, -TR-, -LX- and -LXDEUIL-) shall be charged at the reduced rate.

(b) Telegraphic redirection shall be carried out after the deletion or alteration, if necessary, of the indicator -LF- or -LTF-, according to the rates in force and the classes of service admitted in relations between the country of redirection and the country of destination.

6. The delivery of letter telegrams (LT or LTF) shall take place after 8:00 o'clock local time on the morning after the date of deposit.

The Bureau of Telecommunications' share on international telegrams filed in Luzon addressed to the United States, Hawaiian Islands, Alaska, Guam, Midway, St. Croix, St. Thomas, Puerto Rico and Virgin Islands, and vice versa, shall be added to the rate of the cable company that handled the message.

Examples:

(a) An ordinary telegram (plain-language, code and/or cipher) containing 8 chargeable words filed in *Baguio* and in any telegraph office of the Bureau of Telecommunications addressed to San Francisco, California, U.S.A., shall be charged as follows:

RCA's tolls	P4.80	(P0.60 per word)
Bu. of Telecommunications tools	1.20	(P0.15 per word)
Total charges	P6.00	

The sender of the telegram shall pay P6.00 to the telegraph teller.

(b) An ordinary telegram containing 10 chargeable words filed in *Cebu* and in any telegraph office

of the Bureau of Telecommunications addressed to New York City, U.S.A., shall be charged as follows:

RCA's tolls	P6.80	(P0.68 per word)
Bureau of Telecommunications tools	1.50	(P0.15 per word)
Total charges	P8.30	

(c) An ordinary telegram containing 10 chargeable words filed in *Davao* and in any telegraph office of the Bureau of Telecommunications addressed to Italy, shall be charged as follows:

Commercial Pacific Cable Co. tolls	P9.50	(P0.95 per word)
Bureau of Telecommunications tolls	1.50	(P0.15 per word)
Total charges	P11.00	

International telegrams filed and received in every telecommunication office shall be entered on Form 473 daily so that the corresponding files could be sent immediately, together with tariff and other messages to the Telegraph Examiner, Accounting Division, Manila. International telegrams shall be placed in flat packages labelled "*International Telegrams routed via RCA, EE Cable, CPC, Mackay or Globe*", as the case may be.

These regulations shall supersede existing regulations in conflict herewith.

F. CUADERNO
Director

Approved:

PROSPERO C. SANIDAD
Secretary of Public Works and
Communications

ADMINISTRATIVE ORDER No. 3

July 21, 1950

ADDITIONAL CHARGES FOR MISCELLANEOUS TELEPHONE FACILITIES AND SERVICES

The following extra charges for miscellaneous telephone facilities and services are hereby prescribed, effective August 1, 1950:

Service connection—

- (a) New telephone within the radius of 750 feet) (5 spans) from the telephone terminal P5.00
- (b) New telephone over 750 feet from the telephone terminal will be charged P0.02 per foot of service wire beyond 750 feet in addition to (a) 5.00 plus 0.02/foot

Inside move—

When the telephone connection is to be transferred from one place to another within the building.. 2.00

Outside move—

- (a) When the telephone connection is to be transferred from one building to another 5.00
- (b) If the distance of the new location is over 750 feet from its former place, there will be an additional charge of P0.02 per foot of excess service wire 5.00 plus 0.02/foot

Charge for broken telephone instrument—

- When the telephone instrument is broken thru carelessness in handling 20.00

Charge for missing telephone instrument—

- When the telephone instrument is lost by the subscriber 60.00

Broadcast lines—

- (a) Within the City of Manila and suburbs for first day..... 12.00/day
- (b) If used over 24 hours, the charge will be P6.00 for succeeding days used 12.00 plus 6.00/day

Special private lines—

- Telephone connected directly from one point to another without passing the Telephone Central Switchboard but under the direct control of the subscribers (e.g., Private telephone from the Press Relations Officer, Malacañan to Manila Times) 15.00 per telephone plus connection charges.

F. CUADERNO

Director of Telecommunications

Approved:

PROSPERO C. SANIDAD
*Secretary of Public Works
 and Communications*

DEPARTMENT OF COMMERCE AND INDUSTRY

DEPARTMENT ORDER No. 6

June 1, 1949

RULES AND REGULATIONS GOVERNING LAND MOBILE RADIO SERVICE AND ITS OPERATORS

Pursuant to the provisions of the Radio Control Law, Act No. 3846, as amended by Commonwealth Acts Nos. 365 and 571, the following rules and regulations governing the Land Mobile Radio

Service in the Philippines are hereby promulgated to take effect on June 1, 1949.

EQUIPMENT AND OPERATION

1. The equipment should be built and installed in accordance with the standards of good engineering practice. The frequency must be crystal-controlled.

The radio transmitting and receiving equipment on the land mobile station must be pre-tuned and should not require any resetting, aligning or any similar operation by the operator except the turning on and off of the power switch, the adjustment of the volume control and the turning of a band switch or the depressing of a push button in order to shift to another authorized frequency. The equipment should be so designed that none of the operations necessary to be performed during the course of normal rendition of service may cause off-frequency operation or result in any unauthorized radiation.

2. Operators required in the land mobile service:

- (a) *Base station.*—A base station shall be in the charge of and operated by at least a second class radiotelegraph or a second class radiotelephone operator duly licensed by the Secretary of Commerce and Industry.
- (b) *Land mobile station.*—A land mobile station shall be in the charge of a person holding either any class of commercial radio operator license or a Restricted Land Mobile Radiotelephone Operator Permit issued by the Secretary of Commerce and Industry.

3. *Term of Permit.*—A restricted Land Mobile Radiotelephone Operator Permit may be issued for a period not exceeding three years to any applicant who shall have qualified in an appropriate written examination.

4. *General qualifications of applicants.*—An applicant for a restricted land mobile radiotelephone operator permit must possess the following general qualifications:

- (a) He must be at least 18 years of age.
- (b) He must be of good moral character.
- (c) He must be a citizen of the Philippines.
- (d) He must be able to transmit and receive spoken messages in the National Language, English or Spanish.

5. *Subject of Examination.*—The examination for a restricted land mobile radiotelephone operator permit shall cover the radio laws and regulations (local and international) now in force in the Philippines, which govern the land mobile service, secrecy of communications, distress calls, interference, use of obscene or profane language, wilful damage to the equipment, superfluous transmissions and the penal provisions.

SCOPE OF AUTHORITY OF OPERATOR'S PERMIT

6. *Operator's Authority.*—The holder of a Restricted Land Mobile Radiotelephone Operator Permit may operate only land mobile radio stations using type A3 or F3 emissions.

He is prohibited from making adjustments that may result in improper transmitter operation.

FEES

7. The following fees shall be paid to the Secretary of Commerce and Industry:

(a) Examination fee for a Restricted Land Mobile Radiotelephone permit	₱3.00
(b) Annual permit fee for a Restricted Land Mobile Radiotelephone permit	3.00
(c) Radio station construction permit fee for either a land mobile station or a base station	5.00
(d) Annual license fee for a land mobile station	20.00
(e) Annual license fee for a base station	30.00

DEFINITIONS

8. *Base Station.*—The term "base station" means a radio station in the land mobile service, which is not intended for operation while in motion.

9. *Land Mobile Station.*—The term "land mobile station" means a radio station in the land mobile service, which is capable of surface movement within the geographical limits of the country and which is intended to be used while in motion or during halts at unspecified points.

10. *Land Mobile Service.*—The term "land mobile service" means a service of radio communication between base stations and land mobile stations or between land mobile stations.

11. *Restricted Land Mobile Radiotelephone Operator.*—The term "restricted land mobile radiotelephone operator" means person duly qualified and licensed by the Secretary of Commerce and Industry to operate a land mobile station.

GENERAL PROVISION

12. All provisions of the Radio Control Law, Act No. 3846, as amended, and the regulations promulgated thereunder which are not inconsistent herewith are made a part hereof and shall have full force and effect as to matters not otherwise treated herein.

CORNELIO BALMACEDA
Secretary of Commerce
and Industry

DEPARTMENT ORDER NO. 7

May 8, 1950

RULES AND REGULATIONS GOVERNING RADIO TRAINING SCHOOLS IN THE PHILIPPINES

Pursuant to the provisions of the Radio Control Law, Act No. 3846, as amended by Commonwealth

Acts Nos. 365 and 571, the following rules and regulations governing Radio Training Schools are hereby promulgated to take effect on July 1, 1950.

SECTION 1. *Certificate of Recognition Necessary.*—No person, firm, association, or corporation shall open a radio training school without first securing a certificate of recognition from the Secretary of Commerce and Industry.

SEC. 2. *Application for Recognition.*—Application for recognition shall be made in writing and submitted to the Secretary of Commerce and Industry, stating (a) name of the school; (b) owner of the school; (c) location of the school; (d) course or courses of study proposed; (e) names and qualifications of instructors; (f) equipment; (g) time of completion of the course or courses; and (h) such other information as may be pertinent or may be required.

SEC. 3. *Requirements for Recognition.*—No certificate of recognition may be granted to any radio training school which does not comply with the following requirements:

(a) The owner or operator of a radio training school must be a Filipino citizen, 21 years of age or over and must be of good standing in the community, or, if the owner or operator is a firm, association, or a corporation, at least 80 per centum of the capital of which must be owned by Filipino citizens;

(b) Each class should have not more than fifty (50) students under the charge of a qualified instructor at all times;

(c) The radio training school shall be housed in such quarters as are reasonably adequate for the instruction of radio theory and operation, and suitable for school purposes. There shall be:

- (1) at least two class rooms;
- (2) one library room;
- (3) one code room; and
- (4) one laboratory room which is electrically shielded to prevent unauthorized emissions by projects and experiments from reaching beyond such room;

(d) The radio training school shall have sufficient equipment for the use of the school and the students;

(e) There shall be a radio training station under the charge of an operator who must be a holder of a first class commercial radiotelegraph operator license. The transmitting equipment must be capable of operating in at least four frequencies assigned for the purpose, while the receiving equipment must be capable of tuning in the 500-kcs. and 8-mcs. marine frequency bands, in addition to the frequencies assigned for radio training schools on which the transmitters are operating;

(f) There shall be sufficient parts and accessories necessary for imparting the theory and general principles of electricity and radio, the theory and practical operation of motors, generators and their

auxiliary apparatus, storage batteries and their accessories;

(g) There shall be sufficient wiring material for practical exercises in wiring motors, generators, starters, bells, buzzers, and representative radio installations;

(h) There shall be sufficient buzzers and/or audio oscillators, headphones and transmitting keys for students practice in code;

(i) There shall be at least one automatic code transmitter;

(j) There shall be sufficient testing instruments for locating faults on motors, generators, radio apparatus and their accessories; and

(k) There shall be sufficient up-to-date radio textbooks.

SEC. 4. Certificate of Recognition Revocable for Cause.—A certificate of recognition granted by the Secretary of Commerce and Industry may be revoked for any of the following causes:

(a) False statements made either in the application or in any subsequent statement required of the grantee;

(b) Failure to comply with the provisions of the radio laws and regulations;

(c) Failure to operate the school substantially in conformity with the terms set forth in the certificate of recognition;

(d) Failure to provide reasonable facilities and equipment; and

(e) Failure to employ instructors possessing the necessary qualifications as herein provided.

SEC. 5. Authority to Refuse Applicants to Examinations.—The Secretary of Commerce and Industry may refuse to admit to examinations for radio operators' licenses graduates of any radio training school not holding a certificate of recognition issued by him.

RADIO OPERATOR COURSES

SEC. 6. Course.—The following courses may be offered by radio training schools:

(a) Commercial Radiotelephone Operator; and

(b) Commercial Radiotelegraph Operator.

SEC. 7. Subjects.—The subject matter to be taken up in the Commercial Radiotelephone Operator Course must be capable of imparting to the students the following:

(a) Knowledge of the elementary principles of electricity and radiotelephone;

(b) Detailed knowledge of the practical operation, adjustment and minor repairs of radiotelephone apparatus including broadcast station equipment;

(c) Ability to send correctly and receive correctly by telephone; and

(d) Detailed knowledge of the Radio Laws and Regulations (both Philippine and International) relative to radiotelephone communications and specifically that part of those regulations concerning the safety of life.

The subject matter to be taken up in the Commercial Radiotelegraph Operator Course must be capable of imparting to the students the following:

(a) Knowledge of the general principles and theory of electricity and radio, knowledge of the adjustment and practical working of various types of radiotelegraph and radiotelephone apparatus used in the mobile service, including apparatus used for radio direction-finding and the taking of direction-finding bearings, as well as a general knowledge of the principles of operation of other apparatus generally used for radionavigation;

(b) Theoretical and practical knowledge of the operation and maintenance of apparatus, such as motor-generators, storage batteries, etc., used in the operation and adjustment of radiotelegraph, radiotelephone and radio direction-finding apparatus;

(c) Practical knowledge necessary to repair with the means available on board damage which may occur to the radiotelegraph, radiotelephone and radio direction-finding apparatus during a voyage;

(d) Ability to send correctly and to receive correctly by ear in Continental Morse Code, code groups (mixed letters, figures and punctuation marks) at a speed of at least 16 groups per minute and plain language (5 characters to the word) at a speed of at least 20 words per minute;

(e) Ability to send correctly and to receive correctly by telephone;

(f) Detailed knowledge of the Radio Laws and Regulations (both Philippine and International) applying to radiocommunications, knowledge of the documents relating to charges for radiocommunications, knowledge of the provisions of the Convention for the Safety of Life at Sea which relate to radio, and, in case of air navigation, knowledge of the special provisions governing the aeronautical fixed, mobile and radionavigation services; and

(g) Knowledge of the general geography of the world, especially the principal maritime and air navigation routes and the most important telecommunication routes.

SEC. 8. Textbooks.—The textbooks that may be prescribed by the school for each course shall cover thoroughly the subject matter required by section 7 hereof.

SEC. 9. Minimum Time for Completion of Courses.—The minimum time required for the completion of the radiotelephone and radiotelegraph operator courses are as follows:

(a) Radiotelephone operator—1,000 hours; and

(b) Radiotelegraph operator—1,900 hours.

SEC. 10. Minimum Attainment Required of Students.—Only persons who have completed the high school course prescribed by the Department of Education may be enrolled in the radiotelephone and radiotelegraph operator courses: *Provided, however,* That students who do not possess this qualification may enroll in a radio training school offering the radiotelephone and radiotelegraph operator courses combined with the high school course if such combined course bears the approval of the Department of Education.

SEC. 11. Attendance.—No student who has attended less than 800 hours for the radiotelephone

operator course, or 1,500 hours for the radiotelegraph operator course shall be admitted to take the final examinations.

SEC. 12. *Eligibility for Graduation.*—No student who has not attended faithfully and regularly the lectures and practical work, or who has not acquired a reasonable proficiency in each subject prescribed shall be allowed to graduate. In no case shall any student enrolled in the radiotelegraph operator course be allowed to graduate unless he is capable of sending and receiving at least sixteen words per minute in Continental Morse Code, code groups, and twenty words per minute in plain language.

SEC. 13. *Certificate of Diploma issued to Students Upon Successful Completion of Course.*—A certificate or diploma attesting to the fact that a student has successfully completed the prescribed course shall be issued by the school when a student has completed the prescribed course.

SEC. 14. *Nature of Diploma or Certificate of Graduation.*—No diploma or certificate of graduation shall be issued by any radio training school which may convey the impression that the school is giving higher instruction than that for which it actually possesses a certificate, or which may mislead the public as to the nature of the course or courses which are being taught in such school.

SEC. 15. *Submission of Report.*—The grantee of a certificate of recognition shall, at the end of the school year, furnish the Secretary of Commerce and Industry with the names of students who have enrolled during the year and the names of those who have successfully completed the course or courses and were granted certificates or diplomas.

SEC. 16. *Misleading Advertisement Prohibited.*—The owner or grantee of a certificate of recognition of a radio training school shall not publish or cause to be published in the newspapers, magazines, posters, letterheads, advertisements, or announcements any matter which may convey the impression that the school is giving instructions in any branch of electrical or radio course other than what is actually taught in said school.

SEC. 17. *Qualifications of Instructors.*—The following persons are qualified to teach in radio training schools:

(a) Graduate electrical engineers or radio engineers from universities or schools of good standing;

(b) Holders of the degree of Bachelor of Science in Education or Normal Graduates with at least two years specialized knowledge and training in radio; or holders of the degree of Bachelor of Science in Education or Normal Graduates who are holders of at least second class radiotelegraph or radiotelephone licenses;

(c) Duly licensed first class radiotelegraph operators who have had at least five years satisfactory service as operators in radio stations handling commercial or government messages; and

(d) Persons who have been in the government service as Radio Inspectors or Radio Examiners.

RADIO TRAINING STATION

SEC. 18. *Frequencies for the Use of Radio Training Stations.*—The following frequencies are allocated for the use of radio training stations in Radio Training Schools for the purposes indicated:

2630 kcs.—Working A1, A3;

2835 kcs.—General calling A1, A3;

5220 kcs.—Working A1, A3;

7520 kcs.—Calling and working A1;

149.25 mc.—Calling and working A1, A3, F2, F3; and

149.19mc.—Calling and working A1, A3; F2, and F3.

SEC. 19. *Type of Frequency Control.*—The transmitter shall be crystal controlled and must be capable of maintaining its emission within the frequency tolerances required by the international radio regulations.

SEC. 20. *Maximum Power Input.*—The licensee of a radio training station in a Radio Training School is authorized to use a maximum power input of 75 watts to the plate circuit of the final r. f. amplifier stage of the transmitter. Meters must be provided to measure accurately the plate power input of the final r. f. amplifier.

SEC. 21. *Requirements for Prevention of Interferences.*—The transmitter shall use adequately filtered direct-current plate power supply to minimize frequency modulation and to prevent the emission of broad signals.

Spurious radiations and key clicks shall be reduced or eliminated in accordance with good engineering practice and shall not of such intensity as to cause interference to receiving sets of modern design tuned outside the frequency band of emission normally required for the type of emission employed. In the case of A3 or F3 emission, the transmitter shall not be modulated in excess of its modulation capability to the extent that interfering spurious radiations occur, and in no case shall the emitted carrier be modulated in excess of 100 per cent.

SEC. 22. *Frequency Measurement and Regular Check.*—The licensee of a radio training station in a Radio Training School shall provide means for measuring the transmitter frequency and shall establish a procedure for checking it regularly. The measurement of the transmitter frequency shall be made by means independent of the frequency control of the transmitter.

SEC. 23. *Applications.*—Applications for the establishment of radio training stations in Radio Training Schools shall be made in writing under oath of the applicants, on prescribed forms, and submitted in duplicate to the Secretary of Commerce and Industry. A radio training station license may be renewed upon application therefore

to the Secretary of Commerce and Industry, and upon showing that the licensee has lawfully operated such station at least six months during the term of the license. The applications must be submitted, together with the license sought to be renewed, at least sixty days prior to the date of expiration of the license.

SEC. 24. *License for Operation of Station Necessary.*—No radio training station in a Radio Training School shall be operated except under and in accordance with the provisions of a license issued therefore by the Secretary of Commerce and Industry. The original of each station license or a facsimile thereof shall be posted by the licensee in a conspicuous place in the room in which the transmitter is located, or shall be kept in the personal possession of the operator while on duty, except when such license has been submitted to the Department of Commerce and Industry with application for modification or renewal; or has been mutilated, lost or destroyed, and application has been made for the issuance of a duplicate thereof.

SEC. 25. *Maximum Period of License.*—Radio training stations licenses may be issued for a period not exceeding three years.

SEC. 26. *Logs.*—The licensee of radio training station in a Radio Training School shall keep an accurate log of the operation of the station. Log entries shall include the following data:

(a) The date and time of each transmission. (The date need only be entered once for each day's operation. The expression "time of each transmission" which means the time of making a call, need not be repeated during the sequence of communication which immediately follows; however, an entry shall be made in the log when "signing off," so as to show the period during which communication was carried on.)

(b) The signature of the person manipulating the transmitting key of the radiotelegraph transmitter or the signature of the person operating a transmitter of any other type (type A3, or F3 emission) with statement as to type of emission and the signature of any other person who speaks on the microphone of radiotelephone transmitter (type A3 or F3 emission). (The signature need only be entered once in the log, provided the log contains a statement to the effect that all transmissions were made by the person named, except where otherwise stated. The signature of any person who operated the station shall be entered in the proper space for his transmissions.)

(c) Call-signs of the station called. (This entry need not be repeated for calls made to the same station during any sequence of communication, provided the time of "signing off" is given.)

(d) The input power to the final amplifier stage. (This need be entered only once, provided the input power is not changed.)

(e) The frequency used. (This information need be entered only once in the log for all transmissions unless a change in frequency has been made.

(f) The message traffic handled. (If communications are handled in regular message form, a copy of each message sent and received shall be entered in the log or retained on file for at least one year.)

The log shall be preserved for a period of at least one year following the last date of entry. The copies of record communications and station log, as required under this section shall at all times be available for inspection by authorized Government representatives.

SEC. 27. *Points of Communications.*—A radio training station in a Radio Training School may communicate only with other training stations of other Radio Training Schools. However, in emergencies, it may communicate also with commercial, amateur, or government radio stations.

SEC. 28. *No Remuneration for the Messages of Radio Training Stations.*—No radio training station in Radio Training Schools shall be used to transmit or receive messages for hire, direct or indirect, paid or promised, nor handle messages which relate to the business of any person, firm corporation, association, or organization.

SEC. 29. *Communication Practice.*—Communication practice materials in English, Spanish or the National Language in plain language, and other messages relating to the operation of radio training stations only may be transmitted over the radio training station of any Radio Training School. Under no circumstances shall code messages be sent out over the stations.

SEC. 30. *Transmissions Absolutely Prohibited.*—The transmission or reception by any radio training station of obscene, profane or indecent words or communication or anything which may endanger the security of the Republic or be contrary to its laws or to public order is absolutely prohibited.

SEC. 31. *Broadcasting of Entertainment Prohibited.*—A radio training station in a Radio Training School shall not be used for broadcasting any form of entertainment, for transmitting music, or for the simultaneous retransmission of signals emanating from any class of station other than radio training stations; *provided, however,* That single audio frequency tones may be transmitted on radiotelephone for the purpose of tests of short durations only.

SEC. 32. *Operating Procedure.*—The conditions stipulated for the mobile services in the international radio regulations with regards to operating procedure, traffic handling and prevention of interference shall be followed strictly by radio training stations in Radio Training Schools.

SEC. 33. *Eligibility of Radio Training Schools to Hold License.*—A radio training station license may be issued only to a bona fide Radio Training School holding a valid certificate of recognition from the

Secretary of Commerce and Industry. The radio training station of such school shall be under the charge of a holder of a first class radiotelegraph operator license.

SEC. 34. *Distress Messages.*—Radio communications or signals relating to ships or aircrafts in distress shall be given absolute priority. Upon notice from any station, government or commercial, all other transmissions as may, in any way, interfere with the reception of distress signals or related traffic shall cease on such frequencies and for such time as the reception of distress signals may last.

No station shall resume operation until distress traffic has ended, or until after it is determined that operation by said station will not interfere with distress traffic then being routed, but said station shall again discontinue if the routing of distress traffic is so changed that said station may again cause interference. The status of distress traffic may be ascertained by communicating with government and commercial stations.

The Department of Commerce and Industry may require an effective continuous watch on the international distress frequency of 500 kilocycles and on the high frequency distress frequency of 8280 kilocycles by certain radio training stations in Radio Training Schools.

SEC. 35. *Fees.*—

(a) For filing an application for a certificate of recognition	₱30.00
(b) Certificate of recognition fee for one year	30.00
(c) For renewal of certificate of recognition for one year	30.00
(d) Radio training station construction permit fee	5.00
(e) Radio training station license fee for one year	10.00
(f) Issuance of duplicate construction permit or station license	5.00

SEC. 36. *Penal Provisions:*

A. *Grounds for Suspension or Revocation of Licenses.*—A certificate of recognition of a Radio Training School or the license of a radio training station of such school may be suspended or revoked for the following causes:

- (a) Violating any provision of Act No. 3846, as amended, any regulations promulgated thereunder, or any provisions of the International Radio Regulations applicable in the Philippines;

- (b) Making any false statement in the application for a certificate of recognition or application for construction permit or station license for its radio training station or in any report required to be submitted by these regulations;

- (c) Failing to comply with the conditions under which a certificate of recognition or radio training station license is issued.

B. *Revocation of Radio Stations Construction Permit or License.*—Whenever the Secretary of Commerce and Industry shall institute a revocation proceeding against the holder of any radio training station construction permit or license, it shall initiate said proceeding by serving upon said permittee or licensee an order of revocation effective not less than fifteen days after written notice thereof is given the licensee. The order or revocation shall contain a statement of the grounds or reasons for such proposed revocation and a notice to the licensee of his right to be heard by filing with the Secretary of Commerce and Industry a written request for hearing within fifteen days after receipt of said order. Upon the filing of such written request for hearing by said licensee the order of revocation shall stand suspended and the Secretary of Commerce and Industry will set a time and place for hearing and shall give the licensee and other interested parties notice thereof. If no request for hearing on any order of revocation is made by the licensee against whom such order is directed within the time hereinabove set forth, such order of revocation shall become final and effective, without further action of the Department.

SEC. 37. Any person who shall violate any provision of this Order or of any provision of the International Radio Regulations, shall be punished by a fine of not more than ₱600 or by imprisonment for not more than six months, or both, for each and every offense.

SEC. 38. Any firm, company, corporation or association failing or refusing to observe or violating any provision of this Order, or any provision of the International Radio Regulations shall be punished by a fine of not more than ₱1,000 for each and every offense.

SEC. 39. All rules and regulations inconsistent herewith are hereby repealed.

Approved:

CORNELIO BALMACEDA
Secretary of Commerce
and Industry

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

DEPARTMENT OF THE INTERIOR

Benigno M. Fajardo, appointed ad interim Vice-Mayor, and Joaquin D. Alas, Rizalino Yazon, Federico Sardual, Saturnino Gadia, Luis de Guzman, Benjamin Tumangan and Jesus Mallari, ad interim Members of the Municipal Board of the City of Cabanatuan, July 21, 1950.

Captain Alejandro R. Bumanlag, appointed ad interim Chief of Police of the City of Cabanatuan, July 21, 1950.

Manuel Jariol, appointed ad interim Chief of the Fire Department of the City of Iligan, July 11, 1950.

DEPARTMENT OF FINANCE

Miguel Jardiel, appointed ad interim City Treasurer of the City of Cabanatuan, July 21, 1950.

Quirico Battad, appointed ad interim City Treasurer of the City of Butuan, July 20, 1950.

Gregorio Pareja, appointed ad interim Chairman of the Board of Tax Appeals of the province of Abra, July 22, 1950.

DEPARTMENT OF JUSTICE

Teodulo R. Ricaforte, appointed ad interim Municipal Judge, and Jose R. Villanueva, ad interim City Attorney of the City of Butuan, July 18, 1950.

Gregorio Cadhit, appointed ad interim Municipal Judge, and Leon Aquino, ad interim City Attorney of the City of Cabanatuan, July 18, 1950.

German Vilgera, appointed ad interim Justice of the Peace of Libmanan, Camarines Sur, July 18, 1950.

Julio Arzadon, appointed ad interim Justice of the Peace of Piddig and Carasi, Ilocos Norte, July 18, 1950.

Sofronio N. Chacon, appointed ad interim Justice of the Peace of Quezon, Quezon, July 18, 1950.

Cucufate Baquilod, appointed ad interim Justice of the Peace of Llorente, Samar, July 18, 1950.

DEPARTMENT OF EDUCATION

Pablo P. Reyes, appointed ad interim City Superintendent of Schools for Quezon City, July 22, 1950.

PENSION COMMISSION

Federico Agrava and Ruperto S. Cristobal, appointed ad interim Members of the Pension Commission, July 22, 1950.

MUNICIPAL OFFICIALS

Hilarion Rempillo, appointed Councilor of Libon, Albay, July 12, 1950.

Artemio Villapeña, appointed Councilor of Pulilan, Bulacan, July 20, 1950.

Vedasto Lias, appointed Councilor of San Francisco, Cebu, June 14, 1950.

Crisostomo Socaldito and Filomeno Flordeliza, appointed Councilors of Malita, Davao, July 24, 1950.

Leon Foz, appointed Councilor of Dingras, Ilocos Norte, July 18, 1950.

Emilio Monton, appointed Mayor, Catalino Olayvar, Vice-Mayor, and Floro Orit, Sixto Tidalgo, Olivo Adobas and Gorgonio Nueve, Councilors of Bontoc, Leyte, July 18, 1950.

Zacarias Seguros, appointed Councilor of Leyte, Leyte, July 18, 1950.

Anacleto Evangelista, appointed Councilor of Isabel, Leyte, July 20, 1950.

Faustino Serina, appointed Mayor, Marcelino Maagad, Vice-Mayor, and Isaac Hebia, Constancio Pakino, Isabelo Nangcas and Silvino Vacalares, Councilors of Opol, Misamis Oriental, July 29, 1950.

Elias Abecia, appointed Mayor, Zoilo Magada, Vice-Mayor, and Sergio Tongco, Francisco Roxas, Maximiliano Maderal and Edilberto Sabuero, Councilors of Guinsiliban, Misamis Oriental, July 31, 1950.

Anastacio Go, appointed Vice-Mayor, and Dionisio Vallar and Maximina de Zaballero, Councilor of Sagay, Misamis Oriental, July 31, 1950.

Juan Morales, appointed Mayor, Teodoro Manglicmot, Vice-Mayor, and Vicente Balbido, Benito Riparip, Miguel Pablo, Antonio Fajardo, Leopoldo Petines, Andres Halili and Nazario Macabante, Councilors of Bitulok, Nueva Ecija, July 18, 1950.

Domingo Alejos, appointed Councilor of Gapan, Nueva Ecija, July 18, 1950.

Godofredo Bustos, appointed Councilor of Masantol, Pampanga, July 18, 1950.

Francisco Falgueza, appointed Mayor, Domingo Reyes, Vice-Mayor, and Francisco Dinglasan, Emilio Erandio, Casiano Quinto and Simeon Hernandez, Councilors of Buenavista, Quezon, July 31, 1950.

Florencio Losa, appointed Mayor, and Policarpio Bulan, Miguel Lotoc, Felix Braga and Severino Lacaba, Councilors of Daram, Samar, July 20, 1950.

HISTORICAL PAPERS AND DOCUMENTS

Address of His Excellency, President Elpidio Quirino on the Fourth Anniversary of the Republic of the Philippines delivered at the Luneta, Manila, July 4, 1950:

Countrymen, Friends:

The impressive presentation of our increasing civil and military strength which has just passed before us and the lovely panoramic prospect in which we salute the fourth anniversary of our Republic justly find us all in deep commemorative mood.

This neat spacious green on which we stand, these young trees and the trim new skyline of our capital city rising from the rubble and debris of yesterday, the balmy breeze coming to us from our amplest bay and restored harbor, the generous blue heavens above in quiet witness to this dedicative hour—all combine to touch our hearts and enhance our devotions.

In an atmosphere so rich with associations of memorable historic moments in our life as a nation, we feel a powerful surge in our spirits to voice anew our praise to the Almighty and to render homage to the procession of known and unknown heroes who have made this day possible.

We are here not merely to celebrate a glorious occasion for our country and for our race. We meet to renew our faith in ourselves and reaffirm our loyalty to the democratic institutions which we have established.

When President Roxas unfurled the Philippine flag yonder in 1946, the whole world, as it joined with us in celebration, wondered: "Will it stay there?" I am proud, we should all be proud, of the eloquence with which the Filipino people in all walks of life have since responded with deeds and admirable achievements.

The veteran has rejoined his family and resumed his normal calling, instilling in his community a high sense of productivity and security. The teacher is in the classroom to gratify a universal hunger and compulsion of a school enrollment almost double pre-war. The farmer is now producing more than ever before. The industrialist has bestirred himself, developing new industries. The financier is broadening his horizon, investing in fields not heretofore explored and exploited. The merchant has expanded his activities to different countries of the world while maintaining his trade relations with the United States. The miner has returned to his operation, extending his activities even to new fields. The common worker, by proper union organization, is asserting his rights more effectively for the promotion of his well-being and the national economy.

What has the Government done on its part? It has implemented the promotion of all other productive activities and construction work with the establishment of the Central Bank, the Rehabilitation Finance Corporation and other credit agencies. It is harnessing hydraulic power in strategic places to mobilize industries, old and new. It has constructed irrigation systems and is establishing a fertilizer plant to encourage agriculture. It has expanded and mechanized rice production to make this country self-sufficient in this cereal.

By the immediate use of its credit facilities, the Government has provided the necessary capital not only for the rehabilitation of our major industries such as hemp, sugar, tobacco, coconut and lumber, but also for launching a housing program for the low-salaried employees and expediting the reconstruction of homes, farms and factories.

All these activities come within our government's total economic mobilization program whose objectives reach far into the future. But already we have gone a good long way in resolving many of the problems that have taxed our people's resources since independence.

We have evolved a system to enable the legion of our government employees to benefit from their backpay and tide them over to eventual recovery. We have raised the compensation of employees in lower brackets, the enlisted men in the Army and the public school teachers. We have ministered to the needs of the masses with our social amelioration program. We have bought lands for the landless and accelerated the settlement of public agricultural lands all throughout the country. We have created new branch banks in strategic regions, have provided for small loans to needy farmers and for the redemption of guerrilla notes and emergency bills.

Indeed we started with deficits, but these were incurred to meet initial budgetary requirements and extraordinary constructive activities. Thus we have been able to improve the lot of the less fortunate and make capital investments for the construction of more schools, more roads and bridges, more hospitals and puericulture centers, more irrigation systems and other permanent improvements and the one thousand and one things needed to enhance the people's moral and material life to a degree even greater than before the war. We have not only reconstructed a country, we are building a new one. We are now feeding a bigger nation and providing for its further growth and permanent existence.

On this day, therefore, as we enter upon the fifth year of our independent existence, we have a confident answer to the anxiety of our people and the possible doubt of the whole world regarding the continued existence of our independent government.

Of course, we have had our share of difficulties peculiar to any nation of our status, size and resources. True, it is much easier to receive freedom than to achieve freedom, to obtain independence than to attain independence. But we can say that we have not made any retreat from the challenge of these difficulties. We can say that we have faced them manfully, that we have tackled them with courage and vigor, that we have made progress. What can be more heartening than the fact that we are gathered here today in testimony that we have successfully completed another year of freedom, ready to usher the next, although more difficult and precarious, of greater promise!

For we have not allowed ourselves to be demoralized by the patent distortions of our difficulties and the dire predictions of imminent disaster to our Republic and to our efforts to secure its stability and happiness. We have been subjected to an increasing campaign of ill-wishers who are tirelessly drumming up a sense of tension and danger. Happily, they have not succeeded in breaking the will of our civil population to exchange for the complexities of democracy the discipline of the herd. We have not allowed the fears and confusion of partisan politics to undermine our spirit. We have shown that we know our direction and that we are moving forward.

We have become a respected member of the society of free nations. We have assumed international obligations in keeping with our new name and prestige. We have been discharging our commitments in order to advance justice and freedom especially for those who still have to become free.

Believing in peace and in mutual assistance, we have shown initiative in bringing nations in our part of the world to take common counsel in the study and resolution of our common problems. We have helped crystallize the feeling that in the determination of matters affecting South and Southeast Asia, the voice and the will of the people of the region must be considered and heeded.

Born of a background of generous apprenticeship in the ways of liberty and democracy, we have unequivocally aligned ourselves with America and other free nations devoted to liberty and peace and to the protection of the dignity of human being.

Our Republic is only four years old, but it has taken more, much more, than that to make it what it is today. Behind it is half a century of experience and training for democracy. Behind it is four centuries of Christian culture. Behind it is the memory of a longer racial tradition rooted in sacrifice, courage and self-respect. It is unthinkable that we should wantonly set all these aside for any system or cause that denies all the moral and spiritual values that constitute our priceless inheritance.

We have just participated in a solemn ceremony of lighting the Eternal Flame on the tomb of the Filipino Unknown Soldier. We have performed a symbolic act of faith in the principles that led our heroic dead to give their lives that our Republic might be born and survive. To every succeeding generation they left the responsibility of service to the nation as a priceless legacy. We cannot be less true to the faith that gave glory to them in life and in death. Every new generation that falls heir to that faith has the responsibility to pass on the torch of devoted service to the next. Without doubt, we of the present generation have the character, the resourcefulness and the determination to prove worthy of the faith.

We pray today not that we may be relieved of the responsibility of facing our problems but that we may always have the vision to see them clearly, the strength to bear them, the solidarity, courage and confidence to overcome them.

Because, fundamentally, ours is not solely a problem of survival. We have a mission to accomplish: we have continuously to make democracy work in this part of the world, as it can, and does, and shall work. We must continually show that, as a way of life, it is the richest source of happiness, security and peace.

We are regarded as the leading exponent of a new freedom not hitherto known in this neighborhood. We must and will unite to measure up to this responsibility. We have been heretofore concerned with strengthening the different arms of the Government to stabilize our institutions. Each arm in its zealous effort to give strength to the Government seemed to be in a keen race for self-assertion for power and influence. But to be constructive and fruitful we must realize that all this should be coordinated and find integration with the private efforts of our citizenry to strengthen our Republic.

If national unity and solidarity be given concrete expression, the time is now, when there is a not-far-distant threat to our Republic and national existence. Now is the time for more sober and responsible thinking, for more determination to protect and advance the national welfare, to subordinate personal interest and partisan differences to the common cause, in an act of noble and patriotic self-effacement.

I am most gratified, and we are strengthened beyond measure, that representative elements of the nation realize the grave peril that confronts us and are happily closing ranks. Certainly no patriotic citizen of this country has the right to turn his back as we face again a supreme test of our devotion and loyalty to our country. I know that

every Filipino, true to his name, will do his duty. This is the burden, this is the special meaning of our Fourth of July this year.

Messages of felicitations from friendly countries throughout the world on the occasion of the Fourth Anniversary Celebration of the Philippine Republic, received at Malacañan Palace on July 5, 1950:

From the Israeli Government:

"On the occasion of the Philippine Independence day, I am glad to extend to Your Excellency most cordial congratulations and best wishes in my own name and that of the people of Israel.

"CHAIM WEIZMANN"

* * *

From Denmark:

"On the occasion of the National Day of the Republic, I convey to Your Excellency my sincere congratulations and best wishes for the prosperity of the Philippines.

"FREDERIK R"

* * *

From Bangkok:

"On the fourth anniversary of the inauguration of the Republic of the Philippines, I beg to offer Your Excellency in the name of the King warmest felicitations together with sincerest wishes for the welfare and prosperity of the people of the Philippines.

"RANGSIT PRINCE OF JAINAD REGENT"

* * *

From Canada:

"On behalf of the people of Canada and on my own behalf, I thank you most sincerely for your kind congratulations on occasion of Dominion Day. I send you and the people of the Philippines our warmest greetings and best wishes for the future.

"ALEXANDER OF TUNIS
Governor General of Canada"

* * *

From Chiang Kai-shek:

"On this happy occasion of your Independence Day, I take great pleasure on behalf of the Chinese Government and people in extending to Your Excellency my sincere felicitations and good wishes for your personal well-being and the prosperity of your country.

"CHIANG KAI-SHEK
President of the Republic of China"

* * *

From President Harry S. Truman:

"On this national anniversary of the Philippines, it gives me great pleasure to convey to Your Excellency and to the people of the Philippines sincere greetings and heartiest good wishes.

"HARRY S. TRUMAN"

From Pakistan:

"On behalf of the Government and the people of Pakistan and myself, I send heartiest greetings and good wishes to Your Excellency and to the people of the Republic of the Philippines on the happy occasion of the Independence Day celebrations.

"GOVERNOR GENERAL OF PAKISTAN"

* * *

From the Netherlands:

"I offer Your Excellency my sincerest congratulations on the occasion of the National Day and my best wishes for the Philippines.

"JULIANA R"

* * *

From Argentina:

"En este nuevo aniversario de la independencia de Filipinas me es grato transmitir a Vuestra Excelencia mis más sinceros votos por vuestra ventura personal así como los de prosperidad que en nombre pueblo Argentino formulo para el país amigo.

"JUAN PERON

Presidente de la Nacion Argentina"

* * *

From General Francisco Franco of Spain:

"Con motivo de la fiesta nacional envío a Vuestra Excelencia mi sincera felicitación al propio tiempo que mis más fervientes votos por su bienestar personal y la prosperidad del noble pueblo hermano.

"FRANCISCO FRANCO

Jefe del Estado Español"

**Twenty-first Radio Chat of His Excellency, President Elpidio Quirino,
broadcast to the nation from Malacañan Palace, July 15, 1950:**

Fellow Countrymen:

It has been a most fateful month since my last radio chat with you.

On June 25, Soviet-inspired communists of North Korea invaded the Republic of South Korea and, in effect, challenged the democratic world to make something of it. Almost immediately President Truman accepted the challenge and shot a thrill of courage and hope in all threatened Southeast Asia and the whole world. The United Nations promptly condemned the aggression as a breach of the peace, and fifty-two member nations subsequently ranged themselves through the Security Council on the side of America, by putting General MacArthur in command of the United Nations forces.

Under the shadow of all these ominous developments we celebrated the fourth anniversary of our Republic.

Meanwhile, the North Korean communist armies have successively taken Seoul, Suwon and other important South Korean points, pushing the South Korean government from one provisional capital to another. At the

same time, there have been reports of Communist armies gathering in force at critical frontiers near Western Germany, Yugoslavia, Iran, Indo-China and Manchuria.

Thus within the brief space of three weeks the world has come to realize that it is faced with the grim prospect of a world catastrophe greater than it has ever known. While it is our great hope that the Philippines will not be directly involved and that we may yet be saved from being another theater of armed world conflict, the proximity and reality of a threat to our independence and national existence have ceased to be academic.

For the threat may develop from inside if we do not muster our physical and spiritual resources and coordinate our efforts in order to prepare for the direct emergency. There is immediate need of checking up on our reserves of moral power. Our fourth anniversary has sharpened our appreciation of our national heritage and reinforced our will to solidarity to preserve it. We realize that more important than our individual, our partisan, and our regional interests is the Republic itself. In the united defense of its integrity, our limitations can dissolve and our latent powers find concrete expression in strength that can be invincible. The valorous spirit has been patent all along in our historic resistance to oppression and aggression from the earliest time.

But we of this day cannot simply presume upon it. Nor should we take the blessings peculiar to our way of life for granted. And we cannot wait for the storm to break loose before we take the steps needed to ride and survive it.

Thus, we have already made preparations in many ways. A Price Control Administration has been created to watch the cost of our essential supplies and maintain them at rational levels. A Civilian Emergency Administration has been created to gear our government machinery for efficient and effective operation to safeguard the welfare of the civilian population under emergency conditions. In fact, even before the creation of these organizations, we have integrated our armed forces and have initiated a food production campaign not simply to give practice to our productive powers but really to increase our store against any day of deprivation. I, therefore, call on every citizen to watch their development and progress, to participate freely in the planning and implementation of other measures to achieve their objectives. It is most gratifying to note the wide response of our people, since the initiation of the agencies just mentioned, indicating readiness for united action.

The flow of aid pledged by the United States under our military assistance agreement with it proceeds apace. Since early this month more new arms and supplies for our armed forces have started coming in. The U. S. Military

Survey Mission which has been here two days this week will help step up our preparations in relation to a broader regional defense arrangement. For our own part, we have set aside ₱20,000,000 and may provide more in due course to place our military arm in a better position to cope with the threat posed by alien-inspired local elements seeking through naked force to destroy our democratic system.

We have a definite stake in the Korean war. As a member of the United Nations, we have joined hands with other members to rally to the leadership of America in the effort to stop Red aggression there and thereby prevent it from engulfing us and the rest of the world. We have pledged economic and medical aid. Filipinos may volunteer to serve there under the United States armed forces.

In this venture, we must keep our feet on the ground and appreciate our limitations. Our greatest contribution is in the maintenance of our domestic tranquility. We help contain Communism in the world when we destroy its forces at home. We discharge our international obligations according as we perform our immediate responsibility within our borders.

The American economic mission now with us is looking into the realities of our country's economic problems in a helpful spirit. It is here because America wants to help our country help itself. We need this kind of assistance that challenges our best efforts, places us on our own, and fits into our pattern of self-dependence and preparedness.

The other day, when our Central Bank opened the sale of government bonds to the general public, we affirmed our faith in our capacity for self-help. Here is every private citizen's opportunity to add his mite in the continued building of our country. By buying 4 per-cent-interest government bonds in denominations as low as ₱20 each, every one however modest his income, from the remotest corner of this land to wherever abroad the Filipino has established a name for industry and providence and devotion to his fatherland, directly takes part in developing the country to lay the basis of common prosperity.

And we will have more opportunities of this character. I am sure that every patriotic Filipino will want to use them to advantage. For the world can not have more confidence in our capacity for self-help than we are willing and ready to allow it ourselves.

The trend and tempo of events at home and abroad require that we step up our economic development program, revising it where necessary to achieve maximum results and condition our country for the stresses of any emergency. We cannot start too early to exert that extra energy and effort to attain this end.

Our physical and material preparedness presupposes the greater need of spiritual mobilization. I repeat we must now draw upon our tremendous reserves of moral power.

We have this power in the demonstrated capacity and ability of our predecessors who successfully stood the ordeals of their time. We have this power in the heritage they left us that sets the highest store by human dignity and freedom. We have this power in the free institutions born of this heritage now flourishing in our midst. We have this power in the success of our Republic to weather its first four years against innumerable difficulties posed by its infancy and postwar prostrate condition.

Those are definite and positive spiritual forces that have made us what we are today. We should derive confidence and courage from measuring ourselves against our people's heroic tradition, against the record of our people for fortitude, resistance and sacrifice in the darkest days of the last war.

In a mood of doubt and searching examination, we may get a feeling of futility and helplessness from our awareness of the many weaknesses and limitations which afflict us, our times and our institutions. The thing best to bear in mind is that we are the product of preceding generations whose virtues along with their faults we carry, that they gave a good accounting of themselves when the tests came. Our greater opportunity, of course, is to conduct ourselves with increasing maturity, to respond to the requirements of responsibility and discipline consistent with the added burdens that we have assumed as a free nation.

And so today, far from being paralyzed by our limitations, we should stretch our muscles and take the present as merely a point of departure for developing the moral and spiritual sinews that will be needed in the vaster struggles ahead to build a stable and free Republic. Certainly we should be proud of our antecedents as Filipinos, of our heritage as Filipinos; for it is only as good and strong and free Filipinos that we can meet (as we have met) any emergency, and contribute to the building of a free and friendly world.

**Extemporaneous speech of His Excellency, President Elpidio Quirino,
at the Loyalty Rally of the Philippine Government Employees
Association, Rizal Memorial Stadium, July 28, 1950:**

*Fellow Members of the Official Family,
Ladies and Gentlemen, and Friends:*

I wish to express my deep gratification over the elevating spirit that has brought us together on this spot this afternoon.

On rare occasions, if ever in the past, has this big bulk of public servants of the Government been together to rededicate themselves to the principles of Democracy and Freedom and to loyal, faithful compliance with their duties under the Constitution and to pledge their utmost that is the discharge of their respective duties in the Government they will so conduct themselves promptly and courteously, serv-

ing our people without fear or favor, unto their best ability as decent citizens of this country.

In the past we have seen groups of civil service employees parading in the streets or in front of big offices, especially the Executive building or the Legislative building to demand benefits for their class, or to secure justice or relief from injustice.

What a contrast today. You are gathered here this afternoon not to demand any right nor to express any grievance but to reaffirm your faith in the Government and to express your loyalty to a government of which you are a part.

There is no better occasion than this for all of us to realize our great responsibility at this supreme moment. In the past, we were led by our political leaders to whom we gave almost our blind support because they were fighting for something for which we had struggled for centuries to obtain—our freedom and independence. It was easy then to employ the means of persuasion alone in order to unite the whole population and present a solid front in the struggle for freedom.

But the situation today is different. Once that freedom and independence has been achieved, our next work now is to maintain that freedom and independence so that we can continue enjoying its blessings for ourselves and for our posterity.

The first required leadership is thought and action, or inspiration and persuasion. The second requires leadership that will make us work and fight to maintain that freedom and independence. The first was simply inspiring; the second is thankless and tiring. We need now a great amount of cool calculation, of vision, of sacrifice, of hard work. The leadership of the past has been succeeded by the statesmanship of the present.

I shall never look again to the next elections as far as I am concerned. We shall look farther than the next election, or the one after the next. Our mission is to build and build and build. And when a man is asked to work, dig and build, you cannot make him work simply by inspiration or persuasion. There is something practical something more important than being inspired that would move man into action. And that is the reason why it is difficult during this moment to employ spectacular appeals to the masses, to compel them to action in order that we may be able to maintain the freedom and independence for which our forefathers fought for centuries in the past.

I have always thought and it is my conviction that this bulk of the civil servants before me today constitute the peak of the pyramid of power and influence in the country. It is this bulk of the population that gives life and soul to the Government, and for that matter, the Constitution.

You are the ones that go out, after making your calculations in your offices, applying your trigonometry and logarithms to measure the field, to locate the wealth, to map out our potentialities and come home and prepare the blueprint for our economic development. You are the ones who go out to collect taxes, to teach our children and even our adults. You go from province to province, from municipality to municipality. You are the brain and brawn of this Government. Without you as the cog and wheel of the Government, the machinery cannot function properly. And it is for this reason that, having come from your class, perhaps in a more modest beginning than you have started in the Government, I realize how as I look from a higher plane that this class must be given its proper place and importance.

This gives me occasion to recall that all such measures that have recently been approved to improve the lot or to ameliorate the position and future of this class of employees have been approved, and have been accomplished during my time with you in this Government.

I shall not lay exclusive claim for the credit for having approved the backpay law, or for the increase of the minimum salary of employees of the Government from P40 to around P100, and the salaries of enlisted men from P25 or P30 to P50, and the improvement of the salaries of the school teachers and the increase of wages of the laborers in many instrumentalities of this Government which has encouraged even the private institutions to follow the example and thereby generalize these benefit in our country.

That we have not approved in the last session of Congress the social security bill providing for insurance of the employees of the Government was purely due to the lack of available funds to make the system work. Don't tell me that I have no interest in you. Don't tell me that this Government is not doing anything for the so-called down-trodden, humble, neglected, and discriminated against group—that group in the lower bracket of our Government. Who is responsible for the carrying out of a social program, extending relief not only to government employees but displaced persons of the communities harassed and embarrassed by the dissidents, those who in the far-flung communities are suffering because they have been separated from their relatives who cannot give them support and assistance in times of strain and stress, giving them food, shelter, medicine, schools and bridges?

This only happened, I am proud to state and assert, during my administration. I repeat, I shall not make political capital of this because I am no longer asking anything for myself. All I want is that the lot of the people whom I have served in this Government may be so improved that

they too can enjoy the benefits that they have been trying in the past to obtain.

Four or five years ago, on this very spot where we are now gathered, we saw the bloody encounters of our liberators and our invaders. All around us was then ruin and devastation. And yet, as we recall that soul-inspiring epoch in our national history when we had to fight for our independence and freedom, we are again to contemplate at a distance, not a very distant place, the spectre of death and destruction caused by the war that broke out in Korea a month ago. We are still healing our war wounds and are still rehabilitating our country so cruelly devastated, and yet we have to prepare again for another, perhaps a more bloody debacle, which I wish we could prevent from extending its influence and converting this country again into another world battleground.

But, my friends, the verdict of history is not in our hands. The trouble that is now driving the countries of the world into a more serious conflict than in the past, is not our own responsibility. But whether we like it or not, as I said on another occasion, and I want to repeat it today, our people and our Government have a stake, a definite stake in the Korean war. Democracy has a stake in it. World freedom has a stake in it. And you and I, individually and collectively, whether we like it or not, in one way or another, will be affected or involved. Shall we fold our arms in contemplation of that impending spectacle of death and destruction again? That is the question of the hour.

Our Government has made a commitment not only to the United States but to the United Nations under the treaty and agreement that we have signed in the past and because of our membership in the United Nations Assembly. Under this treaty, the United States of America has pledged to assist us in training and developing our armed forces and in all such other services as may be necessary for us to carry out our obligations, international obligations, including our commitments to the United Nations. If we gave to the United States government the privilege to utilize a portion of our land to establish and maintain military and naval reservations, it was with the idea that we may mutually defend not only our shores but the interests of America and the Philippines in this part of the world, as well as the maintenance of peace in the Pacific.

The time has come for us to fulfill our obligations and poor as we are, we have to join efforts to do so in all diligent pride and with determination. You have heard of the reactivation of the civilian emergency administration that functioned during the last war. We have integrated our armed forces constituting combat teams not only to insure our internal security but to prepare our ground forces for national defense.

I want to make it clear that this Government is not making any empty gesture nor is there any vacillation on our part to actively participate in the campaign for the preservation of peace in the world and for the protection of the liberty and freedom that we now enjoy. But this question must be considered from a realistic and frank standpoint, considering our own capacity and the sufficiency of our finances. Many provinces are daily requesting the Government to send Constabularymen or combat teams to help eradicate violence or dissident activities in their respective jurisdictions. Because of the deficiency of men in the armed forces and the lack of appropriations to equip and maintain such forces, we have not been able fully to comply with the demands from the provinces. We have allowed, however, all able-bodied men in this country to enlist in the armed forces of the United States—and I know that there are many not only eager but impatient to enlist so that they may be able to take advantage of the opportunity to show to the whole world again that we are ready to fight for the freedom of the world and for the peace of mankind.

After all under the provisions of these treaties I just mentioned, Filipinos are qualified to enlist as members of the United States Army in the same manner as American citizens are also qualified to enlist in the Philippine Army. You are, therefore, ready when necessary and called upon and we have already made assurances to this effect to participate in any world conflict which may mean the preservation of our freedom and the maintenance of freedom and peace in the world.

In the meantime, however, you realize the great importance of watching and defending zealously our own home front which is as much a front as the front across the seas. I, therefore, on my part, will request the Congress to appropriate the biggest appropriation available to increase the armed forces of this country and equip them properly and adequately in order that they will be prepared not only to maintain internal security but to fight across or beyond our borders for world freedom and peace.

But, my friends, we are not going to wage any fight with weapons alone. There is something more fundamental, there is something more immediately imperative at the moment before we can equip ourselves properly for any war, and that is the morale of our people. It had been the usual practice in the past, as it is in all nations, for the leaders of the Government to inspire the masses, to lift their morale. But this congregation this afternoon, I want you to know, rather than receiving inspiration from the leaders, has given us encouragement to maintain the high morale in the highest councils of the Government. I want to assure you that now you have lifted the morale of this Government. [*Applause.*]

And it is necessary that, instead of you leaning on us, we have to lean on you at this supreme moment. I repeat, my friends, that we have been able to achieve our independence and freedom. But for us to continue enjoying the blessings of this freedom and independence, is something that belongs not only to us but principally to the younger generation. And if we don't defend our rights today, if we don't help the United Nations in the defense of democracy and freedom of the world, woe unto us! We have to fight to the last, now or never, because if we do not fight now, we have nothing to fight for tomorrow.

My friends, this is an inspiring moment for those of us who have long been working hard to put into the minds of our people that graft, corruption, irregularity and anomaly are not the general practice of the government. Loyalty to the government is not loyalty to the individual members of this government. It is loyalty to the Republic. I shall not ask you to be loyal to me personally. I shall not ask you to be loyal to the cabinet simply because you are a member of this government, no matter how humble the role you are going to play in it. But I shall demand on your loyalty to the Republic, loyalty to your people. *[Applause.]*

We shall not tolerate sabotage in this Government. Let us act together, and not simply sit in judgment upon one another. Let us join to contribute to a common and united effort to facilitate our preparedness and not exploit divisive factors of prejudice and self-righteousness as a condition to action.

The measure of our loyalty to our heroic heritage and its blessings which we enjoy today is our readiness to take up and uphold the nation's common cause of survival as well as victory for the forces for freedom and human decency everywhere.

For this noble end, we rise above our individual prejudices, our personal injuries and frustrations, our partisan differences and difficulties; we will man the ramparts at home to protect and preserve our valid and lasting traditions; we will even go beyond our shores, if needed, to contribute our bit to the resolute defense of those traditions which render us kin to other peoples.

May God bless us all for all times.

DECISIONS OF THE SUPREME COURT

[No. L-1278. January 21, 1949]

LORETO BARRIOQUINTO and NORBERTO JIMENEZ, petitioners,
vs. ENRIQUE A. FERNANDEZ, ANTONIO BELMONTE and
FELICISIMO OCAMPO, as Commissioners of the Four-
teenth Guerrilla Amnesty Commission, respondents.

1. AMNESTY; PARDON AND AMNESTY DISTINGUISHED.—Pardon is granted by the Chief Executive and as such it is a private act which must be pleaded and proved by the person pardoned, because the courts take no notice thereof; while amnesty by Proclamation of the Chief Executive with the concurrence of Congress, and it is a public act of which the courts should take judicial notice. Pardon is granted to one after conviction; while amnesty is granted to classes of persons or communities who may be guilty of political offenses, generally before or after the institution of the criminal prosecution and sometimes after conviction. Pardon looks forward and relieves the offender from the consequences of an offense of which he has been convicted, that is, it abolishes or forgives the punishment, and for that reason it does “nor work the restoration of the rights to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon,” and it “in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence” (article 36, Revised Penal Code). While amnesty looks backward and abolishes and puts into oblivion the offense itself, it so overlooks and obliterates the offense with which he is charged that the person released by amnesty stands before the law precisely as though he had committed no offense.
2. ID.; REQUISITES TO ENTITLE ONE TO INVOKE BENEFITS OF AMNESTY; ADMISSION OF COMMISSION OF OFFENSE NOT REQUIRED.—In order to entitle a person to the benefits of the Amnesty Proclamation of September 7, 1946, it is not necessary that he should, as a condition precedent or *sine qua non*, admit having committed the criminal act or offense with which he is charged, and allege the amnesty as a defense; it is sufficient that the evidence, either of the complainant or the accused, shows that the offense committed comes within the terms of said Amnesty Proclamation. Although the accused does not confess the imputation against him, he may be declared by the courts or the Amnesty Commissions entitled to the benefits of the amnesty. For, whether or not he admits or confesses having committed the offense with which he is charged, the Commissions should, if necessary or requested by the interested party, conduct summary hearing of the witnesses both for the complainants and the accused, on whether he has committed the offense in furtherance of the resistance to the enemy, or against persons aiding in the war efforts of the enemy, and decide whether he is entitled to the benefits of amnesty and to be “regarded as a patriot or hero who have rendered invaluable services to the nation,” or not, in accordance with the terms of the Amnesty Proclamation.
3. ID.; ID.; ID.—There is no necessity for an accused to admit his responsibility for the commission of a criminal act before a court or Amnesty Commission may investigate and extend or not to him the benefits of amnesty. The fact that he pleads

not guilty or that he has not committed the act with which he is charged, does not necessarily prove that he is not guilty thereof. Notwithstanding his denial, the evidence for the prosecution or complainant may show the contrary, as it is generally the case in criminal proceedings, and what should in such a case be determined is whether or not the offense committed is of political character. The plea of not having committed the offense made by an accused simply means that he can not be convicted of the offense charged because he is not guilty thereof, and, even if the evidence would show that he is, because he has committed it in furtherance of the resistance to the enemy or against persons aiding in the war efforts of the enemy, and not for purely political motives.

4. **ID.; WITHIN JUDICIAL NOTICE.**—Since the Amnesty Proclamation is a public act, the courts as well as the Amnesty Commissions created thereby should take notice of the terms of said Proclamation and apply the benefits granted therein to cases coming within their province or jurisdiction, whether pleaded or claimed by the person charged with such offenses or not, if the evidence presented shows that the accused is entitled to said benefits.
5. **ID.; RIGHT TO BENEFITS CANNOT BE WAIVED.**—The right to the benefits of amnesty, once established by the evidence presented, either by the complainant or prosecution, or by the defense, can not be waived, because it is of public interest that a person who is regarded by the Amnesty Proclamation, which has the force of law, not only as innocent, for he stands in the eyes of the law as if he had never committed any punishable offense because of the amnesty, but as a *patriot* or hero, can not be punished as a criminal.
6. **CRIMINAL LAW; MOTIVE FOR COMMISSION OF AN OFFENSE, HOW ESTABLISHED.**—Generally the motive for the commission of an offense is established by the testimony of witnesses on the acts or statements of the accused before or immediately after the commission of the offense, deeds or words that may express it or from which his motive or reason for committing it may be inferred. The statement or testimony of a defendant at the time of arraignment or the hearing of the case about said motive, can not generally be considered and relied on, specially if there is evidence to the contrary, as the true expression of the reason or motive he had at the time of committing the offense. Because such statement or testimony may be an afterthought or colored by the interest he may have to suit his defense or the purpose for which he intends to achieve with such declaration.
7. **MANDAMUS; AMNESTY COMMISSION TO ACT, DUTIES OF.**—To hold that an Amnesty Commission should not proceed to the investigation and act and decide whether the offense with which an accused was charged comes within the Amnesty Proclamation if he does not admit or confess having committed it, would be to defeat the purpose for which the Amnesty Proclamation was issued and the Amnesty Commissions were established. If the courts have to proceed to the trial or hearing of a case and decide whether the offense committed by the defendant comes within the terms of the Amnesty Proclamation although the defendant has pleaded not guilty, there is no reason why the Amnesty Commissions can not do so. Where a defendant to admit or confess having committed the offense or being responsible therefor before he can invoke the benefit of amnesty, as there is no law which makes such admission or confession not admissible as evidence against him in the courts of justice in case the Amnesty Commission finds that the offense does

not come within the terms of the Amnesty Proclamation, nobody or few, would take the risk of submitting their case to said Commissions.

ORIGINAL ACTION in the Supreme Court. Mandamus.

The facts are stated in the opinion of the court.

Roseller T. Lim for petitioners.

Antonio Belmonte for respondents.

FERIA, J.:

This is a special action of mandamus instituted by the petitioners against the respondents who composed the 14th Guerrilla Amnesty Commission, to compel the latter to act and decide whether or not the petitioners are entitled to the benefits of amnesty.

Petitioners Norberto Jimenez and Loreto Barrioquinto were charged with the crime of murder. As the latter had not yet been arrested the case proceeded against the former, and after trial the Court of First Instance of Zamboanga sentenced Jimenez to life imprisonment. Before the period for perfecting an appeal had expired, the defendant Jimenez became aware of the Proclamation No. 8, dated September 7, 1946, which grants amnesty in favor of all persons who may be charged with an act penalized under the Revised Penal Code in furtherance of the resistance to the enemy or against persons aiding in the war efforts of the enemy, and committed during the period from December 8, 1941, to the date when each particular area of the Philippines where the offense was actually committed was liberated from enemy control and occupation, and said Jimenez decided to submit his case to the Guerrilla Amnesty Commission presided by the respondents herein, and the other petitioner Loreto Barrioquinto, who had then been already apprehended, did the same.

After a preliminary hearing had started, the Amnesty Commission, presided by the respondents, issued on January 9, 1947, an order returning the cases of the petitioners to the Court of First Instance of Zamboanga, without deciding whether or not they are entitled to the benefits of the said Amnesty Proclamation, on the ground that inasmuch as neither Barrioquinto nor Jimenez have admitted having committed the offense, because Barrioquinto alleged that it was Hipolito Tolentino who shot and killed the victim, they cannot invoke the benefits of amnesty.

The Amnesty Proclamation of September 7, 1946, issued by the President with the concurrence of Congress of the Philippines, reads in part as follows:

"WHEREAS, since the inception of the war and until the liberation of the different areas comprising the territory of the Philippines, volunteer armed forces of Filipinos and of other nationalities operated as guerrillas and other patriotic individuals and groups pursued

activities in opposition to the forces and agents of the Japanese Empire in the invasion and occupation of the Philippines;

"WHEREAS, members of such forces, in their determined efforts to resist the enemy, and to bring about his ultimate defeat, committed acts penalized under the Revised Penal Code;

"WHEREAS, charges have been presented in the courts against many members of these resistance forces, for such acts;

"WHEREAS, the fact that such acts were committed in furtherance of the resistance to the enemy is not a valid defense under the laws of the Philippines;

"WHEREAS, the persons so accused should not be regarded as criminals but rather as patriots and heroes who have rendered invaluable services to the nation; and

"WHEREAS, it is desirable that without the least possible delay, these persons be freed from the indignity and the jeopardy to which they are now being subjected;

"NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, in accordance with the provisions of Article VII, section 10, paragraph 6 of the Constitution, do hereby declare and proclaim an amnesty in favor of all persons who committed any act penalized under the Revised Penal Code in furtherance of the resistance to the enemy or against persons aiding in the war effort of the enemy, and committed during the period from December 8, 1941 to the date when each particular area of the Philippines was actually liberated from the enemy control and occupation. This amnesty shall not apply to crimes against chastity or to acts committed from purely personal motives.

"It is further proclaimed and declared that in order to determine who among those against whom charges have been filed before the courts of the Philippines or against whom charges may be filed in the future, come within the terms of this amnesty, Guerrilla Amnesty Commissions, simultaneously to be established, shall examine the facts and circumstances surrounding each case and, if necessary, conduct summary hearings of witnesses both for the complainant and the accused. These Commissions shall decide each case and, upon finding that it falls within the terms of this proclamation, the Commissions shall so declare and this amnesty shall immediately be effective as to the accused, who shall forthwith be released or discharged."

The theory of the respondents, supported by the dissenting opinion, is predicated on a wrong conception of the nature or character of an amnesty. Amnesty must be distinguished from pardon.

Pardon is granted by the Chief Executive and as such it is a private act which must be pleaded and proved by the person pardoned, because the courts take no notice thereof; while amnesty by Proclamation of the Chief Executive with the concurrence of Congress, and it is a public act of which the courts should take judicial notice. Pardon is granted to one after conviction; while amnesty is granted to classes of persons or communities who may be guilty of political offenses, generally before or after the institution of the criminal prosecution and sometimes after conviction. Pardon looks forward and relieves the offender from the consequences of an offense of which he has been convicted, that is, it abolishes or forgives the punishment, and for that reason it does "nor work the restoration of the rights to hold public office, or the right

of suffrage, unless such rights be expressly restored by the terms of the pardon," and it "in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence" (article 36, Revised Penal Code). While amnesty looks backward and abolishes and puts into oblivion the offense itself, it so overlooks and obliterates the offense with which he is charged that the person released by amnesty stands before the law precisely as though he had committed no offense. (Section 10[6], Article VII, Philippine Constitution; *State vs. Blalock*, 61 N. C., 242, 247; *In re Briggs*, 135 N. C., 118; 47 S. E., 403; *Ex parte Law*; 35 Ga., 285, 296; *State ex rel Anheuser—Busch Brewing Ass'n. vs. Eby*, 170 Mo., 497; 71 S. W., 52, 61; *Burdick vs. United States*, N. Y., 35 S. Ct., 267; 271; 236 U. S., 79; 59 Law. ed., 476.)

In view of the foregoing, we are of the opinion and so hold that, in order to entitle a person to the benefits of the Amnesty Proclamation of September 7, 1946, it is not necessary that he should, as a condition precedent or *sine qua non*, admit having committed the criminal act or offense with which he is charged, and allege the amnesty as a defense; it is sufficient that the evidence, either of the complainant or the accused, shows that the offense committed comes within the terms of said Amnesty Proclamation. Hence, it is not correct to say that "invocation of the benefits of amnesty is in the nature of a plea of confession and avoidance." Although the accused does not confess the imputation against him, he may be declared by the courts or the Amnesty Commissions entitled to the benefits of the amnesty. For, whether or not he admits or confesses having committed the offense with which he is charged, the Commissions should, if necessary or requested by the interested party, conduct summary hearing of the witnesses both for the complainants and the accused, on whether he has committed the offense in furtherance of the resistance to the enemy, or against persons aiding in the war efforts of the enemy, and decide whether he is entitled to the benefits of amnesty and to be "regarded as a patriot or hero who have rendered invaluable services to the nation," or not, in accordance with the terms of the Amnesty Proclamation. Since the Amnesty Proclamation is a public act, the courts as well as the Amnesty Commissions created thereby should take notice of the terms of said Proclamation and apply the benefits granted therein to cases coming within their province or jurisdiction, whether pleaded or claimed by the person charged with such offenses or not, if the evidence presented shows that the accused is entitled to said benefits.

The right to the benefits of amnesty, once established by the evidence presented, either by the complainant or prosecution, or by the defense, can not be waived, because

it is of public interest that a person who is regarded by the Amnesty Proclamation, which has the force of a law, not only as innocent, for he stands in the eyes of the law as if he had never committed any punishable offense because of the amnesty, but *as a patriot* or hero, can not be punished as a criminal. Just as the courts of justice can not convict a person who, according to the evidence, has committed an act not punishable by law, although he confesses being guilty thereof, so also and *a fortiori* they can not convict a person considered by law not a criminal, but a patriot and hero, for having rendered invaluable services to the nation in committing such an act.

While it is true that the evidence must show that the offense charged was not against chastity and was committed in furtherance of the resistance against the enemy, for otherwise, it is to be naturally presumed that it has been committed for purely personal motive, it is nonetheless true that though the motive as a mental impulse is a state of mind or subjective, it need not be testified to by the defendant himself at his arraignment or hearing of the case. Generally the motive for the commission of an offense is established by the testimony of witnesses on the acts or statements of the accused before or immediately after the commission of the offense, deeds or words that may express it or from which his motive or reason for committing it may be inferred. The statement or testimony of a defendant at the time of arraignment or the hearing of the case about said motive, can not generally be considered and relied on, specially if there is evidence to the contrary, as the true expression of the reason or motive he had at the time of committing the offense. Because such statement or testimony may be an afterthought or colored by the interest he may have to suit his defense or the purpose for which he intends to achieve with such declaration. Hence it does not stand to reason and logic to say, as the dissenting opinion avers, that unless the defendant admits at the investigation or hearing having committed the offense with which he is charged, and states that he did it in furtherance of the resistance to the enemy, and not for purely personal motive, it is impossible for the court or Commission to verify the motive for the commission of the offense, because only the accused could explain his belief and intention or the motive of committing the offense.

There is no necessity for an accused to admit his responsibility for the commission of a criminal act before a court or Amnesty Commission may investigate and extend or not to him the benefits of amnesty. The fact that he pleads not guilty or that he has not committed the act with which he is charged, does not necessarily prove that he is not guilty thereof. Notwithstanding his denial, the evi-

dence for the prosecution or complainant may show the contrary, as it is generally the case in criminal proceedings, and what should in such a case be determined is whether or not the offense committed is of political character. The plea of not having committed the offense made by an accused simply means that he can not be convicted of the offense charged because he is not guilty thereof, and, even if the evidence would show that he is, because he has committed it in furtherance of the resistance to the enemy or against persons aiding in the war efforts of the enemy, and not for purely political motives.

According to Administrative Order No. 11 of October 2, 1946, creating the Amnesty Commissions, issued by the President of the Philippines, cases pending in the Courts of First Instance of the province in which the accused claims the benefits of Amnesty Proclamation, and cases already decided by said courts but not yet elevated on appeal to the appellate courts, shall be passed upon and decided by the respective Amnesty Commission, and cases pending appeal shall be passed upon by the Seventh Amnesty Commission. Under the theory of the respondents and the writer of the dissenting opinion, the Commissions should refuse to comply with the directive of said Administrative Order, because in almost all cases pending in the Court of First Instance, and all those pending appeal from the sentence of said courts, the defendants must not have pleaded guilty or admitted having committed the offense charged, for, otherwise, they would not or could not have appealed from the judgment of the Courts of First Instance. To hold that an Amnesty Commission should not proceed to the investigation and act and decide whether the offense with which an accused was charged comes within the Amnesty Proclamation if he does not admit or confess having committed it, would be to defeat the purpose for which the Amnesty Proclamation was issued and the Amnesty Commissions were established. If the courts have to proceed to the trial or hearing of a case and decide whether the offense committed by the defendant comes within the terms of the Amnesty Proclamation although the defendant has pleaded not guilty, there is no reason why the Amnesty Commissions can not do so. Where a defendant to admit or confess having committed the offense or being responsible therefor before he can invoke the benefit of amnesty, as there is no law which makes such admission or confession not admissible as evidence against him in the courts of justice in case the Amnesty Commission finds that the offense does not come within the terms of the Amnesty Proclamation, nobody or few would take the risk of submitting their case to said Commissions.

Besides, in the present case, the allegation of Loreto Barrioquinto that the offended party or victim was shot

and killed by Agapito Hipolito, does not necessarily bar the respondents from finding, after the summary hearing of the witnesses for the complainants and the accused, directed in the said Amnesty Proclamation and Administrative Order No. 11, that the petitioners are responsible for the killing of the victim, either as principals by coöperation, inducement or conspiracy, or as accessories before as well as after the fact, but that they are entitled to the benefits of amnesty, because they were members of the same group of guerrilleros who killed the victim in furtherance of the resistance to the enemy or against persons aiding in the war efforts of the enemy.

Wherefore, the respondents are hereby ordered to immediately proceed to hear and decide the applications for amnesty of petitioners Barrioquinto and Jimenez, unless the courts have in the meantime already decided, expressly and finally, the question whether or not they are entitled to the benefits of the Amnesty Proclamation No. 8 of September 7, 1946. So ordered.

Moran, C. J., Parás, Bengzon, and Briones, JJ., concur.

PERFECTO, J., concurring:

An information for the crime of murder was filed against petitioners with the Court of First Instance of Zamboanga. Because Barrioquinto was then at large, the information was dismissed and a separate criminal case was instituted against him. Jimenez was tried with other accused and sentenced to life imprisonment. Within the time for appeal, Jimenez became aware of Proclamation No. 8, dated September 7, 1946, granting amnesty to all persons who have committed offenses in furtherance of the resistance against the Japanese, and decided to submit his case to the 14th Guerrilla Amnesty Commission. Barrioquinto, having been apprehended, did the same.

After the preliminary hearing had started, the Commission issued on January 9, 1947, an order for the return of the cases of petitioners to the Court of First Instance of Zamboanga, without deciding whether or not they are entitled to amnesty, because Barrioquinto stated in his testimony that it was Hipolito Tolentino who fired at and killed the offended party. The Commission issued the order upon the thesis that, for any person to invoke the benefits of the Amnesty Proclamation, it is required that he should first admit having committed the offensive act for which he is prosecuted.

The text of the Amnesty Proclamation fails to support the thesis. To entitle a person to have his case heard and decided by a Guerrilla Amnesty Commission only the following elements are essential: First, that he is charged or may be charged with an offense penalized under the Revised Penal Code, except those against chastity or for

purely personal motives; second, that he committed the offense in furtherance of the resistance to the enemy; and third, that it was committed during the period from December 8, 1941, to the date when the area where the offense was committed was actually liberated from enemy control and occupation.

If these three elements are present in a case brought before a Guerrilla Amnesty Commission, the latter cannot refuse to hear and decide it under the proclamation. There is nothing in the proclamation to even hint that the applicant for amnesty must first admit having executed the acts constituting the offense with which he is charged or may be charged.

Upon the facts in this case, petitioners are entitled to have their applications for amnesty heard and decided by respondent 14th Guerrilla Amnesty Commission.

With the revocation of its order of January 9, 1947, respondent 14th Guerrilla Amnesty Commission is ordered to immediately proceed to hear and decide the applications for amnesty of petitioners Barrioquinto and Jimenez.

TUASON, *J.*, dissenting:

I am unable to agree with the decision of the Court and shall briefly state my reasons.

The decision proceeds on the assumption that the Guerrilla Amnesty Commission refused to hear and decide the application for amnesty of the present petitioners. I think this is a mistake. There were examinations of records, hearing and decisions.

The pleadings and annexes show that hearing was held on the 9th of January, 1947 in which the two petitioners and their counsel were present, and one of them, Barrioquinto, testified, and that it was after that hearing, on the same date, that the Commission denied their petition in a written order and directed the clerk to return the "expedientes" to the Court of First Instance of Zamboanga for its final action.

It is apparent from this order that the Commission acted in the manner contemplated by Proclamation No. 8 of the President. The return of the papers to the court merely follows the procedure provided in the proclamation, which stipulates "that any case now pending or which may be filed in the future which a Guerrilla Amnesty Commission decides as not within the terms of the amnesty shall proceed in accordance with the usual legal procedures in the courts without regard to this proclamation."

The proclamation does not prescribe any specific mode of hearing. That the Commission shall examine the facts and circumstances surrounding each case is all that is provided for. In its discretion, the Commission may, if it deems necessary, hear the witnesses both for the complain-

ant and the accused. This hearing does not have to be formal; it may be summary, according to the proclamation. This privilege, discretionary with the Commission, was afforded the accused as far as the nature of their defense permitted.

I get the inference from an examination of the orders of the Commission that the latter went over the record of each defendant's criminal case. These records are, without doubt, the "expedientes" which the Commission ordered sent back to the court. The Commission, we are to presume, read the exhaustive and well-reasoned decision of the court against Jimenez and the evidence for and against him on which that decision is based. The fact that Jimenez and his witnesses had already given his evidence at length, may well account for the failure or refusal of the Commission to hear him and his witnesses further. Only Barrioquinto, whose case had not yet been tried in the Court of First Instance because he had escaped, was heard by the Commission. The record of that hearing consists of 33 written pages.

As to the determination of the pretended right of the defendants to the benefits of amnesty, the two orders of the Commission are decisions on the merits, definite and final as far as the Commission is concerned. The fact that the defendants denied having committed the crime imputed to them was cited by the Commission as ground for its decision to turn down their application. That circumstance was not given as ground for refusal to act. Moreover, in the second order, a lengthy order dictated on the motion for reconsideration by Jimenez, additional reasons are stated.

The Commission has thus amply performed the duties required of it by the Amnesty Proclamation in both the matters of investigating and deciding. The Commission heard one accused and examined the evidence introduced and the decision rendered against the other. With the reasoning by which the Commission reached its decision, or with the result of its decision, it is not within the province of the court to concern itself.

The Amnesty Commissions are executive instrumentalities acting for and in behalf of the President. They are not courts; they are not performing judicial functions, and this Court has no appellate jurisdiction over their actuations, orders or decisions.

Mandamus is ordinarily a remedy for official inaction. (*Guanio vs. Fernandez*, 55 Phil., 814.) The Court can order the Commission to act but it can not tell the Commission how to act. How or for whom a case should be decided is a matter of judgment which courts have no jurisdiction to control or review. And so is the sufficiency or insufficiency of evidence. The writ of mandamus will not issue to control or review the exercise of discretion of

a public officer where the law imposes upon a public officer the right and the duty to exercise judgment. In reference to any matter in which he is required to act, it is his judgment that is to be exercised and not that of the court. (Blanco vs. Board of Medical Examiners, 46 Phil., 190.)

In the view I take of the case, it is unnecessary to discuss the court's premise that "there is nothing in the proclamation to even hint that the applicant for amnesty must first admit having executed the acts constituting the offense with which he is charged or may be charged." Nevertheless, I don't think the Commission was wrong in its theory.

Amnesty presupposes the commission of a crime. When an accused says that he has not committed a crime he cannot have any use for amnesty. It is also self-evident that where the Amnesty Proclamation imposes certain conditions, as in this case, it is incumbent upon the accused to prove the existence of those conditions. A petition for amnesty is in the nature of a plea of confession and avoidance. The pleader has to confess the allegations against him before he is allowed to set out such facts as, if true, would defeat the action. It is a rank inconsistency for one to justify an act, or seek forgiveness for an act of which, according to him, he is not responsible. It is impossible for a court or Commission to verify the presence of the essential conditions which should entitle the applicants to exemption from punishment, when the accused and his witnesses say that he did not commit a crime. In the nature of things, only the accused and his witnesses could prove that the victim collaborated with the enemy; that the killing was perpetrated in furtherance of the resistance movements; that no personal motive intervened in the commission of the murder, etc., etc. These, or some of these, are matters of belief and intention which only the accused and his witnesses could explain.

As a matter of procedure, certiorari or mandamus, whatever the present proceeding may be, does not lie because there is another plain, speedy and adequate remedy at law. The decision of the Commission has not closed the avenue for the petitioners to invoke the provisions of the Amnesty Proclamation before the courts. I invite attention to the provision of the proclamation which I have quoted. In the case of Jimenez, he could ask for a new trial, as he in effect would have the Commission grant him; and in the case of Barrioquinto, he could set up the proclamation in his plea when his trial comes up.

PABLO, M.:

Concurro con esta disidencia.

Respondents ordered to proceed to hear and decide applications for amnesty.

[No. L-1369. January 21, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
MANUEL VALENCIA, defendant and appellant

1. CRIMINAL LAW; MURDER; EVIDENCE; LONE, UNRELIABLE AND UNCORROBORATED TESTIMONY IS INSUFFICIENT FOR CONVICTION.—The evidence on record does not prove beyond all reasonable doubt that M. V. is in any way responsible for the death of V. K. The testimony of A. F. in this respect is wholly unreliable. The witnesses who could have corroborated him, T. L. and his cousin P. or J. de L., were not called to testify. There is no explanation why T. L. was not summoned to testify. The allegation that his whereabouts is unknown is hardly convincing. A. F.'s report to the detectives made many days after the finding of the remains of V. K. that he heard that his cousin P was liquidated, appears to strengthen the suspicion that the existence of his cousin P is a figment of his imagination.
2. ID.; ID.; ID.; ASSUMPTION OF FALSE NAME.—The witness' posing before I. S. in the morning of October 20, 1945, as M. V., instead of presenting himself with his true name, could be attributed only to a guilty conscience. If there was no illegality to be hidden, there was no reason for him to assume a false name, with which he could have evaded responsibility, and throw it into another, and he could not think of a better scapegoat than M. V. whose name, because of the fact that the latter defrauded him of ₱5,000, the value of the morphine tablets, would have been constantly looming in his memory and imagination for purposes of retaliation.
3. CRIMINAL PROCEDURE; APPEAL; ACCUSED'S ESCAPE FROM PRISON; DISMISSAL OF APPEAL.—Appellant's attorney *de officio* argued vigorously against the dismissal of the appeal upon the plea that appellant is innocent, explaining that his escape was motivated by the desire of eluding the punishment meted out to him by a judgment the injustice of which appeared to him revolting. According to the official report of the provincial warden, appellant took advantage of a mass jail break which had taken place in Malolos on August 24, 1947, but he was recaptured, together with three other detainees, two hours after the jail break. The circumstances of this case do not justify dismissal of the appeal which, upon the conclusion we have arrived at on the merits of the case, would entail a clear miscarriage of justice.

APPEAL from a judgment of the Court of First Instance of Bulacan. Pecson, J.

The facts are stated in the opinion of the court.

Alfonso Ponce Enrile for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Jose G. Bautista* for appellee.

PERFECTO, J.:

On October 19, 1945, at one o'clock at noon, two persons went to the house of Lucia Kempis, 152 Castaños, Manila, looking for her husband, Vitaliano Kempis, because they wanted to rent a car, Hudson 1941, owned by the Kempises. Vitaliano was out and the two men waited for him until he arrived at 4 o'clock on the same afternoon.

Upon agreeing on the sum of ₱150 as rent for a trip to Bocaue, Vitaliano put gasoline in the gas tank and air in the tires of the car. At 4.30 the two persons and Vitaliano left, but it was the last time that the latter was seen alive by his wife, notwithstanding his promise that he would be back that same night.

The next day Lucia Kempis made inquiries about her husband and reported his disappearance to the police authorities.

Upon clues given by a former servant of the Kempises, the detectives were able, on December 10, 1945, to arrest Avelino Fajardo, whom they had been looking for for some time.

He was one of the two persons who on October 19, 1945, went to rent the car of the Kempises and he was the one who indicated where the Hudson car and the cadaver of Vitaliano Kempis could be found. The widow and the detectives, accompanied by him, found the car in the repair shop of Irineo Santos, in barrio San Jose, Baliwag, and the remains of Vitaliano Kempis buried just outside the fence of the Baliwag cemetery at Buson Street.

Avelino Fajardo testified that he was able to learn about the location of the burial place of the deceased Vitaliano Kempis through information given to him by Peping, or Jose de Leon, a cousin of his.

The only evidence linking appellant Manuel Valencia with the death of Vitaliano Kempis consists in the lone testimony of Avelino Fajardo to the effect that on the night of October 19, 1945, after completing an illegal deal he made on GI goods in Baliwag, he went with Vitaliano Kempis and Teofilo Lopez, his companion when he rented the Hudson car, to a restaurant to take his supper. After finishing supper and having been paid for it and when the three of them were about to board the car to return to Manila, the two accused, Manuel Valencia and Augusto Chico, each with pointed .45-caliber revolver, held them up, telling them not to move if they did not want to die, and that they wanted the car. The two accused boarded the car, not without Valencia taking first ₱80 from Avelino Fajardo, and ordered Vitaliano Kempis to continue driving it, and he (Avelino Fajardo) and Teofilo Lopez, just went away in the direction of Plaridel while the car was being driven towards the church. The accused told them not to report the matter to the authorities otherwise they would implicate them and as soon as they are confined in Bilibid they would kill them.

Not a single witness has corroborated Avelino Fajardo on the Baliwag hold-up. His companion, Teofilo Lopez, who could have corroborated him, was not called to testify.

Irineo Santos, a witness for the prosecution, testified that at about 2 o'clock in the morning of October 20, 1945,

a tall and dark individual requested him to make repairs on the Hudson car, advising him that the next morning Manuel Valencia would come for it. The following morning a person by the name of Manuel Valencia came for the car and, when asked by the prosecution to point in the courtroom the person of Manuel Valencia, if he was present, he pointed to Avelino Fajardo, while he did not recognize accused Manuel Valencia.

Manuel Valencia testified that he had not been in Baliwag on the night of October 19, 1945, and denied that he and Augusto Chico held up Valeriano Kempis, Teofilo Lopez and Avelino Fajardo on said night in Baliwag, and the reason why Avelino Fajardo implicated him in the case is that he has not given to him the proceeds of a half case of morphine tablets that the accused sold for Avelino Fajardo, the accused wanting to sell first the whole merchandise one and a half cases of which still remained. Later the accused told Avelino Fajardo that the remaining morphine tablets and the money were confiscated by the police authorities, but Avelino Fajardo did not believe it and required the accused to pay him the total value of the merchandise amounting to ₱5,000. He took the watch of the accused and asked him to pay the value of all the merchandise, but the accused did not make any payment.

The evidence on record does not prove beyond all reasonable doubt that Manuel Valencia is in any way responsible for the death of Vitaliano Kempis. The testimony of Avelino Fajardo in this respect is wholly unreliable. The witnesses who could have corroborated him, Teofilo Lopez and his cousin Peping or Jose de Leon, were not called to testify. There is no explanation why Teofilo Lopez was not summoned to testify. The allegation that his whereabouts is unknown is hardly convincing. Avelino Fajardo's report to the detectives made many days after the finding of the remains of Vitaliano Kempis that he heard that his cousin Peping was liquidated, appears to strengthen the suspicion that the existence of his cousin Peping is a figment of his imagination.

There are indications to the effect that Avelino Fajardo appears to be more responsible for the death of Vitaliano Kempis than appellant Manuel Valencia and it is regrettable that his exclusion as one of those accused of the murder of Vitaliano Kempis should preclude the prosecution from accusing him again. His conduct and the conduct of his companion Teofilo Lopez belie his story as to the alleged hold-up on the night of October 19, 1945, in Baliwag. Neither he nor Teofilo Lopez had reported the incident to the authorities. There was absolutely no reason for them to be afraid of being implicated for any offense that, at the time, involved only the forcible taking of the car. They did not report the incident to the wife of

Vitaliano Kempis. Instead, Avelino Fajardo went to hide in Nueva Ecija and in other places, and it took the authorities weeks before locating and arresting him.

Avelino Fajardo has not given any explanation as to how he was able to help the detectives locate the Hudson car in the repair shop of Irineo Santos. The testimony of the latter gives the lacking explanation and points to Avelino Fajardo as one of those responsible for the bringing of the car to the repair shop, and that explanation is incompatible with the story of the hold-up.

There is absolutely no explanation why Avelino Fajardo would want to know the burial place of the deceased Vitaliano Kempis, and neither would he explain why his cousin Peping should have such definite knowledge and desire to impart that knowledge to Avelino Fajardo. The latter's knowledge of the place is rather a circumstantial evidence that shows that Avelino Fajardo had been a personal witness, if not a protagonist, in the burial.

His posing before Ireneo Santos in the morning of October 20, 1945, as Manuel Valencia, instead of presenting himself with his true name, could be attributed only to a guilty conscience.

If there was no illegality to be hidden, there was no reason for him to assume a false name, with which he could have evaded responsibility, and throw it into another, and he could not think of a better scapegoat than Manuel Valencia whose name, because of the fact that the latter defrauded him of P5,000, the value of the morphine tablets, would have been constantly looming in his memory and imagination for purposes of retaliation.

At the hearing of the case on October 9, 1947, the prosecution brought up the question as to whether or not the appeal should be dismissed because of appellant's escape on August 24, 1947, from the provincial jail in Malolos, without, however, making any move on the matter, leaving it entirely to the discretion of this Court, under section 8 of Rule 120, considering appellant's subsequent recapture.

Appellant's attorney *de officio* argued vigorously against the dismissal of the appeal upon the plea that appellant is innocent, explaining that his escape was motivated by the desire of eluding the punishment meted out to him by a judgment the injustice of which appeared to him revolting. According to the official report of the provincial warden, appellant took advantage of a mass jail break which had taken place in Malolos on August 24, 1947, but he was recaptured, together with three other detainees, two hours after the jail break. The circumstances of this case do not justify dismissal of the appeal which, upon the conclusion we have arrived at on the merits of the case, would entail a clear miscarriage of justice.

The appealed decision is reversed and appellant Manuel Valencia is acquitted.

Moran, C. J., Parás, Feria, Pablo, Bengzon, and Briones, JJ., concur.

TUASON, J., dissenting:

I dissent. I am satisfied beyond reasonable doubt that the appellant was an active participant in the crime even though Avelino Fajardo was "more guilty". The exclusion of the latter from the prosecution is indeed a very shocking miscarriage of justice, but this does not justify the discharge of one less guilty.

Judgment reversed; appellant acquitted.

[No. L-1187. January 25, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
EUFRACIO LANSANG (*alias* LEGASPI), defendant and
appellant.

CRIMINAL LAW; MURDER; ACCOMPLICE, PARTICIPATION AND LIABILITY AS.—During those times of danger and uncertainty, when a person was kidnapped by a band especially when the members thereof were armed and masked or otherwise disguised, and at night, almost always the result was that the person kidnapped was never heard from or seen again. E must have realized this and yet, although without expressly agreeing to the kidnapping and killing of L, he, upon invitation of his companions went to the house of the victim, inquired about him, identified him, and helped the band in apprehending him and in tying his hands, and, later accompanied the party to the place where he (L) was clubbed to death while he (L) stood by. It is obvious that although the accused E. L. took no direct part in the actual murder of P. L., nevertheless, he had cooperated in the perpetration of the crime on the latter's person by previous and simultaneous acts, though not indispensable to its consummation and for which he must be held criminally liable, but as a mere accomplice.

APPEAL from a judgment of the Court of First Instance of Pampanga. Santiago, J.

The facts are stated in the opinion of the court.

Julio M. Catolos for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Augusto M. Luciano* for appellee.

MONTEMAYOR, J.:

This is an appeal by Eufracio Lansang *alias* Legaspi from a decision of the Court of First Instance of Pampanga finding him guilty as an accomplice in the murder of the deceased Pablo Libu and sentencing him to an indeterminate penalty of from four (4) years, two (2) months and one (1) day of *prisión correccional* to twelve (12) years and six (6) months of *prisión mayor* (should be *reclusión temporal*), with the accessory penalties pro-

vided for by law, to indemnify the heirs of Libu in the amount of ₱400 and to pay one-fifth of the costs.

The facts of this case as established by the evidence may be briefly stated as follows: During the Japanese occupation, about December 20, 1944, around nine o'clock in the evening, the appellant Lansang accompanied by four armed and masked men whose true names are not known but who were known by their respective aliases, namely: Vergara, Peter, Navarro, and Elson, went to the house of Pablo Libu in barrio Babaosican, municipality of Porac, Pampanga and asked for him from his wife Emilia de Ausen. She told the group that her husband was in the cane field boiling sugar cane syrup, whereupon Lansang and his companions went down the house to look for him but they met him a few yards from his house as he was coming home. They immediately caught him and tied his hands behind his back. Some of the men in the group again went up the house and took some clothes, blankets and a guitar belonging to Libu's family and then they all went to the neighboring barrio of Mitla of the same town of Porac, taking Libu along with them. On the road that same night, prosecution witness Pablo Galang saw and met them, including Lansang, and upon seeing Libu in their custody with his hands tied behind his back, pleaded with the group to release him because he was a good man, but said group particularly Vergara who was next to the prisoner and who was guiding his footsteps, refused to grant the request. From there, the party went to a certain place in the barrio of Mitla where Libu was punched and clubbed to death by Vergara, Peter and Navarro while Elson and the appellant Lansang stood by about 30 meters away, presumably acting as guards or observers. Then Elson sent Peter and Lansang to get a shovel to dig a grave and after it was dug, all the members of the party lowered Libu's body into it and then covered it with earth, after which, they separated from each other after being warned by Elson not to squeal about the incident.

The disappearance of Pablo Libu remained a mystery until about the month of July, 1946, when Pablo Galang happened to mention to the widow Emilia de Ausen about his having met Pablo Libu and his captors on the road on the evening of December 20, 1944. Emilia or some close relative of the deceased filed a complaint with the Military Police in Tarlac and Lt. Felicisimo Z. Mostajo, MP-Detachment Commander had Lansang arrested for investigation. In the course of the investigation Lansang made statement (Exhibit C) in the presence of the lieutenant and his two sergeants Vengua and Rosete, the original statement which was in the Pampango dialect being translated into English by Mayor Dizon of Porac. In said statement (Exhibit C) the appellant narrated the facts

already stated, adding that he had been invited by his four companions to go to the house of Libu to get him for investigation because he was a notorious cattle rustler. Upon indication of and with the help of Lansang, the grave of Libu was located and dug, the bones inside recovered and later identified by Emilia de Ausen and Lansang himself as those of Libu. Dr. Pineda examined the skull and found a fracture in it, evidently caused by the clubbing that caused Libu's death.

Lansang and his four companions were charged with murder. Because said four companions were still at large, only the appellant was tried. During the trial, Lansang attempted to repudiate his written statement (Exhibit C), claiming that he had been tortured or otherwise maltreated by the Military Police soldiers. We are not inclined to seriously consider this claim of maltreatment designed to neutralize or nullify his written statement for the reason that said claim of Lansang on this point is not convincing, not only because of the flat denial made by Lieutenant Mostajo and because it turned out that a witness Jose de la Cruz presented by the defense to corroborate the claim of Lansang on the alleged maltreatment admitted that all that he knew about the alleged maltreatment was told him by Lansang himself because De la Cruz was not present in the room where the investigation and alleged maltreatment took place, but also because Exhibit C was presented and admitted by the court without any objection on the part of the appellant. Moreover, the only substantial difference between the story contained in Exhibit C and the testimony of the appellant during the trial is that, whereas in the affidavit (Exhibit C) Lansang stated that he went to the house of Pablo Libu with his four companions upon invitation of said companions, in his testimony during the trial he would have the court understand that he joined the group composed of Peter, Navarro, Vergara and Elson and Libu their captive when they were already on the road, and that he accompanied them up to the place where Libu was killed, and this he did upon order of the group, with the threat that he would be killed if he refused.

There are several reasons why we cannot accept this story of the appellant. In the first place, the party of kidnapers composed of Peter, Navarro, Elson and Vergara would find neither reason, advantage nor necessity of ordering Lansang to accompany them merely to witness Libu being clubbed to death. On the contrary, to better hide the crime, it was more advisable to have no witness to the perpetration of the killing. In the second place, the widow Emilia de Ausen positively told the court during the trial that Lansang was one of the members of the group who went to her house inquiring for her husband, and that it was Lansang who asked her for her husband.

In the third place, it is more reasonable to believe that Lansang, upon invitation, went with his companions to the house of Libu because said companions did not know Libu but that Lansang, knowing Libu, could identify him.

As we have already stated, the trial court found the appellant guilty only as an accomplice. While we are not averse to believing that Lansang may not have participated in the original plan and design to kidnap and later kill Libu, when he, Lansang, was invited to go to the house of the deceased to get and take him away, and at night, he knew or must have known what, eventually, was going to happen to the victim. During those times of danger and uncertainty, when a person was kidnapped by a band especially when the members thereof were armed and masked or otherwise disguised, and at night, almost always the result was that the person kidnaped was never heard from or seen again. Lansang must have realized this and yet, although without expressly agreeing to the kidnapping and killing of Libu, he, upon invitation of his companions went to the house of the victim, inquired about him, identified him, and helped the band in apprehending him and in tying his hands, and, later accompanied the party to the place where he (Libu) was clubbed to death while he (Lansang) stood by. In this connection, we are reproducing with favor a pertinent paragraph from the decision of Judge Santiago, appealed from.

"It is obvious that although the accused Eufracio Lansang took no direct part in the actual murder of Pablo Libu, he had co-operated in the perpetration of the crime on the latter's person by previous and simultaneous acts not indispensable to its consummation and for which he must be held criminally liable. He went with the party to the victim's house, aided in tying the latter's hands and, while the crime was being committed, together with Elson, watched for what was transpiring or might occur."

Lansang might conceivably be held guilty as principal in this crime of murder as the Solicitor General says in his brief:

"From the evidence adduced, it is evident that although appellant Eufracio Lansang did not take a direct part in the actual slaying of Pablo Libu, he was present during the whole stage of its perpetration and had actively participated in the kidnapping of the victim. The presence then of the appellant at the time and place of the killing, his active participation in the kidnapping of the victim, together with the other circumstances surrounding the case show a community of criminal design and purpose and the existence of previous understanding between appellant and his companions that makes him guilty as a principal of the crime of murder (*People vs. Mandagay*, 46 Phil., 838)."

However, although the Justices who concur in the present opinion are convinced of the guilt of Lansang, the majority of them are of the belief that he should be held liable only as an accomplice. This seems to be the more reasonable and safer course. In case of doubt the courts should always give the accused the benefit thereof. Furthermore,

contrary to the contention of the Solicitor General, there is reason to doubt that there was a community of criminal design and purpose as far as Lansang was concerned. According to his affidavit (Exhibit C), which is the main proof of his guilty participation, he had merely been invited to go to the house of Libu. As further evidence that he was, in all probability, not connected with the original plan to kidnap Libu and later kill him, according to the widow of the deceased, Emilia de Ausen, at her house that evening of December 20, 1944, while the four companions of Lansang were armed, and had their face covered with handkerchiefs, Lansang was unarmed, and did not cover his face and that was the reason why she recognized him; and at the moment that Libu was clubbed to death the appellant was 30 meters away.

Considering the gravity of the offense herein committed, the minimum prison sentence of four (4) years, two (2) months and one (1) day of *prisión correccional*, may well and should be increased as it is hereby increased to six (6) years and one (1) day of *prisión mayor*. With this modification, the decision appealed from is hereby affirmed, with costs against the appellant.

Moran, C. J., Parás, Feria, Pablo, Perfecto, Bengzon, Briones, and Tuason, JJ., concur.

Judgment modified; penalty increased.

[No. L-1288. January 25, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
JACINTO PINEDA (*alias* ISING PINEDA), defendant and
appellant.

CRIMINAL LAW; TREASON; ATROCITIES COMMITTED ON GUERRILLA SUSPECTS AS CONSTITUTING ADHERENCE TO THE ENEMY.—The facts which were established and proven beyond reasonable doubt consisted of the arrest, inhuman killing of or atrocities committed upon guerrilla suspects by the enemies in which the herein accused had participated. Such deeds were overt acts of treason, affording the Japanese aid and comfort. By inference they constituted evidence of adherence to the enemy.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Ambrosio Padilla for appellant.

Assistant Solicitor General Manuel P. Barcelona and
Solicitor Manuel Tomacruz for appellee.

TUASON, J.:

The appellant, Jacinto Pineda *alias* Ising Pineda, was prosecuted in the People's Court, charged with treason on six counts. The Third Division of that Court found the defendant guilty of the charges in counts 1, 3, 4 and 5, and acquitted him on counts 2 and 6.

At least two eye-witnesses testified to each set of the following facts:

Count 3. Benjamin Rayola, a resident of Lucena, Quezon, who had joined the Panay guerrillas, visited his home town with two other guerrillas, De Leon and Aguile, on December 22, 1944. As they were counting guerrilla notes at the home of Benjamin's folks, on December 23, three Japanese and three Filipinos, one of whom was the appellant, arrested them with Benjamin's mother and brother Amado, and marched them to the Japanese garrison. The raiding party slapped Benjamin, De Leon and Aguile, asked them why they had so much money, and thoroughly searched the house for arms. In the garrison, the prisoners were lined up, their names and ages were taken down and they were maltreated. Mrs. Rayola and Amado were released after a few days but Benjamin, Aguile and De Leon were not seen or heard of after the release of the first two.

Count 4. On December 21, 1944, in Lucena, after mass, several Filipinos, including the accused, and two Japanese came to Jose Unson's house and searched it thoroughly for firearms and radio. All of them were armed with pistols or revolvers. Not finding what they were looking for, they left. Later they came back and took Jose Unson to the garrison, releasing him on the night of that day. However, the next day, that is on the 22nd at noon, two Japanese came back and arrested Jose Unson again. After that arrest Jose Unson was not seen alive anymore. His remains were exhumed on all Saints' Day in 1945 in Lukban, Quezon. The cause of Jose Unson's arrest and execution was that he had a radio and had been tuning in on foreign broadcasts for war news which he used to pass on to his acquaintances and friends.

Count 5. Federico Unson, Jr. and his family resided in barrio Bocoban, Lucena, Quezon. On October 6, 1944, at about ten o'clock in the morning, Japanese soldiers and four Filipinos came, picked up Federico Unson, questioned him and maltreated him. One of the Filipinos was Jacinto Pineda. All of them, Japanese and Filipinos, were carrying arms. Pineda did most of the questioning and slapped Unson during the examination. The subject of the investigation was the location of the guerrillas and the bodies of two makapilis who had been kidnapped and killed two days previously by the resistance forces. Other people in the barrio were questioned, too. While the investigation was going on, guerrillas swooped down on the Japanese and their allies and the latter fled, Jacinto Pineda having been wounded above the eye. About two o'clock in the afternoon the Japanese and their Filipino cohorts including the accused came back. There were about eight in the party. This time, the accused had a bandage around his head. Federico Unson and two of his laborers were

tied together "back to back" and beaten up. The laborers' names were Ruben Godoy and Isaias Perez. After Unson and his two laborers were punished, the whole barrio was razed to the ground. Then Godoy was marched by Japanese in one direction and Perez and Unson were marched by Japanese and Filipinos, including Pineda, in another direction. That was between three and four o'clock in the afternoon. The next day Unson and Perez were found dead. Unson was blindfolded and his body was almost suspended in midair from a coconut tree littered with wounds one of which was a gunshot wound in the chest. Perez's body was in a more dreadful condition, lying flat on the ground and covered with flies.

The appellant denied participation in any of the above arrests, beatings and executions. He denied having been a spy for the Japanese.

We are convinced beyond reasonable doubt of the truth of the evidence for the prosecution, and find no error in the trial judges' findings. If any error was committed, it was perhaps an error on the side of the accused—his exoneration from counts Nos. 2 and 6.

The deeds committed by the appellant were overt acts of treason, affording the Japanese aid and comfort. By inference they constituted evidence of adherence to the enemy charged in count 1.

The defendant has been properly sentenced to *reclusión perpetua* with the accessories of law and to pay a fine of P20,000 and costs. This judgment is affirmed with costs of this appeal against the appellant.

Moran, C. J., Parás, Feria, Pablo, Perfecto, Bengzon, Briones and Montemayor, JJ., concur.

Judgment affirmed.

[No. L-1561. January 25, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. JOSE CADA, defendant and appellant

1. CRIMINAL LAW; MURDER; EVIDENCE; WEIGHT AND SUFFICIENCY; FACTS ESTABLISHED BY THE STATE APPEAR SO NATURAL, POSITIVE AND SINCERE.—The evidence for the defense has not overcome the testimonies of the witnesses for the prosecution who had no motive to twist the truth. If the father and mother of the deceased could, blinded by their parental attachment to the victim, have been induced as a reprisal to procure the doom of appellant, such thing cannot be said regarding witnesses C. D. and M. A. who were completely neutral and impartial and could not think of causing injustice to appellant in view of their friendship to him. Before the shooting, appellant had been in their house, engaged in amicable conversation with them. Although the prosecution failed to prove any specific motive why appellant had to attack and kill M. B., the narration of facts made by the four witnesses for the prosecution appears so natural, positive

and sincere that it cannot fail to command acceptance of its credibility, and the record does not offer any valid reason why we should reverse the action of the trial court in believing it.

2. ID.; ID.; EVIDENCE TO BE BELIEVED MUST BE IN ACCORD WITH COMMON EXPERIENCE AND OBSERVATION OF MANKIND.—No satisfactory explanation was given why M. B. had not been stopped from approaching appellant. He was accompanied by his mother and father and also, according to the defense, by Z. L. There were three persons who could have avoided his coming near the appellant. Appellant had not mentioned that anyone of the three companions of the deceased tried to stop the latter from exposing himself to be shot by appellant. Z said that neither he nor the father did or said anything to stop M from approaching appellant. Z alleged that he and the father were not near M, and he himself dared not do anything. Even if the mother, C. A., was the only one at the side of M, it is unbelievable that she had not stopped his son from seeking his own death. On the assumption that, being a woman, she was physically weaker than her son, there should not be any doubt that she could have saved her offspring by a tight embrace. The imminence of the danger would have certainly given her, as shown by a common human experience, the needed strength to overcome her son's attempt to approach appellant, and if she had not been able to overpower him, at least she would have given a chance to her husband to come and help her in holding their son.
3. ID.; ID.; EVIDENCE; MOTIVE; PROVOKED PRIDE AS CONDUCTOR TO COMMIT RECKLESS AND ABSURD ACTS.—Although the testimonies for the prosecution failed to offer any evidence to show any motive for appellant to shoot M, appellant's testimony offers the hint that his sense of pride might have been provoked by the fact that, after arresting M, the latter remonstrated that he was not the only one causing trouble and that, while M. B. was chasing people, appellant did not arrest him. According to appellant, when he came to the house of A. A., C. D. asked him if he had not yet seen M. B. A provoked pride may drive a person into perpetrating the most reckless and absurd acts.
4. ID.; ID.; HEROISM IS NOT A MITIGATING CIRCUMSTANCE.—The evidence conclusively proved that appellant is guilty of the crime of murder qualified by treachery. It is to be regretted that he happened to be one of the heroes who fought in Bataan and later captured by the Japanese, and that at the time the offense was committed, he was rendering services in the guerrilla forces of Samar; but the law in this case does not make any distinction between ordinary citizens and heroes. We would have considered his valuable services to the Fatherland as a mitigating circumstance, but the law fails to provide for it, and it would exact from heroes the same measure of responsibility for any crime they may have committed as that exacted from an ordinary citizen.

APPEAL from a judgment of the Court of First Instance of Samar. Benitez, J.

The facts are stated in the opinion of the court.

Norberto J. Quisumbing for appellant.

Assistant Solicitor General Carmelino G. Alvendia and
Solicitor Honorio Romero for appellee.

PERFECTO, J.:

On the night of February 20, 1943, at 11 o'clock, Manuel Bertos, 17 years old, got permission from his parents, Honorato Bertos and Carlota Anacta, to get his guitar from somewhere. His mother objected at first, because she was afraid that Manuel might get drowsy as the next morning they had to go to Dolores to build a house. Permission was finally granted and Manuel left their house, located at San Fernando St., Borongan. Because Manuel had been delayed in coming home, his father and mother went down their home to look for him. After a while, they found Manuel and told him to go home. While the three were returning home, Manuel walked at the side of his mother, while his father was a little behind. Upon passing in front of the house of Antonio Anacta, appellant went down from said house, chambered his shotgun, placed its butt on his right shoulder and fired at short distance at Manuel, hitting and shattering the latter's head. Manuel fell down dead. His father immediately took hold of the shotgun and wrestled with appellant for its possession. During the struggle, the barrel of the gun hit Carlota in the head, causing her a minor injury. Honorato was finally able to gain possession of the shotgun, and appellant ran away.

Soon thereafter, police officers came to investigate the incident.

The above is the substance of the testimonies of Carlota Anacta, Honorato Bertos, Catalina Denoso and Mariano Amengo, witnesses for the prosecution.

The witnesses for the defense tried to show that during the early part of the same evening, Manuel Bertos drank tuba, had trouble with some persons, intervened in a fist fight and, apparently intoxicated, tried, before meeting appellant, to stab two persons, one of whom had to flee, the other continuing in his company.

The latter, Zosimo Limbauan, testified that at about 6 o'clock that evening, he and Manuel Bertos drank tuba twice in the store of one Carmelita Apilado, after which Manuel went to the house of Tecla next to the store. Pedro Cardona and Pedro Capacite arrived at the store of Carmelita and exchanged words and blows. (145). The fighters went outside of the store and there continued the fight. Manuel entered in the scuffle to help Cardona. Pedro Capacite got hold of a pole and tried to strike Manuel but Alfredo Cardona ran behind Capacite, got hold of the pole and prevented Capacite from hitting Manuel. After the incident, Zosimo went home to take supper. At about 9 o'clock he went out. He met Manuel walking alone in the street. (146-147). Manuel told him "you are a double crosser because you did not help me when I had a quarrel." Zosimo did not utter any

word, but Manuel thrust his bolo against him. But Zosimo was not hit. Manuel was not in sound mental condition. (148). Both continued walking together towards the house of one Titong where they met Manuel's parents. The mother asked him about his guitar and Manuel said that it was in the house of Tecla. The four of them continued walking back home. (149). Manuel and his mother was a little ahead, followed by his father and Zosimo. As they reached the house of Antonio Anacta, Manuel went shouting, "Where are you now Henry. If you want to fight come down." Appellant came down from the house of Antonio Anacta with a shotgun, and said: "Manuel, what are you shouting for? I am a peace officer." Manuel, picking up something from the ground, threw it at appellant and said, "Justice which is useless." (150). Manuel drew his small bolo and approached appellant, who stepped backward. Manuel continued going forward in an attitude of thrusting his bolo. Appellant retreated but when he reached the fence of the house, he levelled his shotgun and fired. (151. Manuel was hit and Zosimo ran to his house. (152).

Appellant testified that on February 20, 1943, he was an MP assigned to Borongan by Lieutenant Dorillo. (178). Before, he served in the army in Bataan, surrendered on May 18, 1942, and was imprisoned by the Japanese. In September, 1942, he returned to Samar, suffering from malaria. (179). The last days of December, 1942, the guerrilla forces in Samar were organized and he was taken by Lieutenant Dorillo to join the guerrilla. On the night of February 20, 1943, he was called by Feliciano Titong, because there was trouble in San Fernando Street (180). When they arrived at the municipal building, they found one Barte complaining that he was beaten in San Fernando Street by one Menloy. When Titong and appellant were near the house of Amang Cardona, appellant saw a person and, finding him to be Menloy, he arrested him and brought him to the municipal building. (181). Menloy told him that he was not the only one causing trouble as there was Manuel Bertos who was chasing people, and appellant did not arrest him. When appellant came back to the place of the alleged trouble, there was no longer trouble. As there was a shower, and noticing the house of Antonio Anacta to be partly open, he went up and said good evening. (182). Sometime later, appellant heard a shout near the house of Antonio Anacta. It was a challenge for Henry to go down if he was decided to fight. (184). Catalina Denoso said that it was Manuel Bertos and "I reached my gun and I went down. As I passed through the door, I placed the gun on my shoulder." He met in the street Manuel Bertos, his mother and father, and Zosimo Limbauan. He told Ma-

Manuel that he was an authority and asked him why he was shouting and challenging anybody in the street. (185). Manuel picked up something on the street and threw it at the appellant, saying, "*Justicia na waray data*" (authority which has no use). Manuel drew from his waist on the left side a bolo and rushed towards appellant, who said: "Be careful Manuel I am an agent of the law, a military police, drop that bolo." Manuel did not obey and instead continued rushing. Appellant retreated, but his gun was on guard, "putting the butt of the gun under my right armpit with the muzzle pointed to the deceased." Appellant continued stepping backward for less than two meters until he reached the fence where he stopped. (186). "I cocked my gun and loaded it to frighten him only. I tried to fire to the air but I did not notice it went up. Manuel whirled around and fell down dead." The appellant wrestled with Manuel's father who got hold of the gun. Antonio Anacta came and helped in wrestling the gun from appellant, who then ran to the municipal building. (187).

The evidence for the defense has not overcome the testimonies of the witnesses for the prosecution who had no motive to twist the truth. If the father and mother of the deceased could, blinded by their parental attachment to the victim, have been induced as a reprisal to procure the doom of appellant, such thing cannot be said regarding witnesses Catalina Denoso and Mariano Amongo who were completely neutral and impartial and could not think of causing injustice to appellant in view of their friendship to him. Before the shooting, appellant had been in their house, engaged in amicable conversation with them. Although the prosecution failed to prove any specific motive why appellant had to attack and kill Manuel Bertos, the narration of facts made by the four witnesses for the prosecution appears so natural, positive and sincere that it cannot fail to command acceptance of its credibility, and the record does not offer any valid reason why we should reverse the action of the trial court in believing it.

There are strong reasons to reject the defense's theory, namely:

1. No satisfactory explanation was given why Manuel Bertos had not been stopped from approaching appellant. He was accompanied by his mother and father and also, according to the defense, by Zosimo Limbauan. There were three persons who could have avoided his coming near the appellant. Appellant had not mentioned that anyone of the three companions of the deceased tried to stop the latter from exposing himself to be shot by appellant. Zosimo said that neither he nor the father did or said anything to stop Manuel from approaching ap-

pellant. Zosimo alleged that he and the father were not near Manuel, and he himself dared not do anything. Even if the mother, Carlota Anacta, was the only one at the side of Manuel, it is unbelievable that she had not stopped his son from seeking his own death. On the assumption that, being a woman, she was physically weaker than her son, there should not be any doubt that she could have saved her offspring by a tight embrace. The imminence of the danger would have certainly given her, as shown by a common human experience, the needed strength to overcome her son's attempt to approach appellant, and if she had not been able to overpower him, at least she would have given a chance to her husband to come and help her in holding their son.

2. While appellant testified that, in firing, he only intended to fire in the air to scare the deceased, Zosimo testified that appellant actually aimed and fired at the deceased.

3. Appellant insinuated in his testimony that he fired in self-defense, but he has not explained why he had to kill Manuel, by levelling his shotgun at the victim's head. Would it not have been enough to impede Manuel's approach to him by thrusting the barrel of his gun, considering that the bolo carried by Manuel, according to Zosimo, was only one foot long? And if it was unavoidable to fire, why did not appellant aim his gun at some other part of Manuel's body that would stop aggression without killing him?

4. The contention that Manuel had a bolo carries no weight. To corroborate appellant and Zosimo as to the bolo in question, Feliciano Titong, a defense witness, said that, after the shooting, he saw at the scene of the crime, not far from the body of Manuel, a bolo and its scabbard. He threw them in the school yard for fear that the relatives of the deceased might use the weapon for revenge. But Titong's testimony appears to be belied by his own conduct, when he failed to inform about said bolo and scabbard the police authorities who came to the scene immediately after the shooting. He kept in his bosom the secret of his knowledge until three months later, when he could not hold it any longer and had to communicate it to appellant. The story is too unnatural to deserve any credence.

5. The testimony of Zosimo Limbauan is made incredible by another yarn that after having been accused by Manuel to be a double crosser and, for said reason, Manuel thrust his bolo against him, he was able to continue walking together with Manuel as far as the scene of the shooting. Has the story not been concocted just to enable him to appear as a witness as to how the shooting took place?

Although the testimonies for the prosecution failed to offer any evidence to show any motive for appellant to shoot Manuel, appellant's testimony offers the hint that his sense of pride might have been provoked by the fact that, after arresting Menloy, the latter remonstrated that he was not the only one causing trouble and that, while Manuel Bertos was chasing people, appellant did not arrest him. According to appellant, when he came to the house of Antonio Anacta, Catalina Denoso asked him if he had not yet seen Manuel Bertos. A provoked pride may drive a person into perpetrating the most reckless and absurd acts.

The evidence conclusively proved that appellant is guilty of the crime of murder qualified by treachery. It is to be regretted that he happened to be one of the heroes who fought in Bataan and later captured by the Japanese, and that at the time the offense was committed, he was rendering services in the guerrilla forces of Samar; but the law in this case does not make any distinction between ordinary citizens and heroes. We would have considered his valuable services to the Fatherland as a mitigating circumstance, but the law fails to provide for it, and it would exact from heroes the same measure of responsibility for any crime they may have committed as that exacted from an ordinary citizen.

The trial court sentenced appellant to *reclusión perpetua* with the accessories provided by law and to indemnify the heirs of the deceased in the amount of ₱2,000 and the costs. The indemnity should be increased to ₱6,000 in accordance with the doctrine laid down in *People vs. Amansec*, L-927, 45 Off. Gaz. (Supp. to No. 9), 51 and, as thus modified, the appealed judgment is affirmed.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

Judgment modified; indemnity increased.

[No. L-2456. January 25, 1949]

NICOLAS B. POTOT, petitioner, *vs.* JUAN L. BAGANO, the SECRETARY OF JUSTICE and the JUDGE OF COURT OF FIRST INSTANCE OF CEBU, respondents.

PUBLIC OFFICERS; JUSTICE OF THE PEACE; ABANDONMENT OF POSITION; ACCEPTANCE OF INCOMPATIBLE PUBLIC OFFICE.—Acceptance of other public offices incompatible with judicial functions operate as an abandonment of the position of a justice of the peace. (*Floresca vs. Quetulio*, G. R. No. L-2215, November 22, 1948, and *Maddumba vs. Ozaeta*, G. R. No. L-2061, December 14, 1948.)

ORIGINAL ACTION in the Supreme Court. Quo Warranto.

The facts are stated in the opinion of the court.

Ramon Deterte, Gaudioso P. Montecillo and Cecilio V. Gillamac for petitioner.

Solicitor General Felix Bautista Angelo and Solicitor Felix V. Makasiar for respondent. Secretary of Justice, and *Juan L. Bagano* for himself.

TUASON, J.:

This is a quo warranto proceeding instituted by a pre-war justice of the peace whose position was filled by the appointment and confirmation of the respondent after liberation.

The facts bring this case within the authority of *Luis Floresca vs. Amparo Quetulio*, G. R. No. L-2215, November 22, 1948, and *Domingo Maddumba vs. Roman Ozaeta*, G. R. No. L-2061, December 14, 1948. Petitioner's acceptance of other public offices incompatible with judicial functions operate as an abandonment of the position to which he seeks reinstatement.

It results that petitioner was appointed justice of the peace for the municipality of Pilar, Province of Cebu, in November, 1933. He held that office until April 24, 1944 (Exhibits 1 and 2), when he ceased to act for reasons not disclosed in the record. On August 19, 1945, the jurisdiction of the justice of the peace of San Francisco, Poro and Tudela, Vicente de Roda, was extended to comprise the municipality of Pilar (Exhibits 3, 4, and 5). Vicente de Roda was later succeeded by Felixberto R. Sosmeña, who was justice of the peace until April 14, 1946. From the latter date to September 1, 1946, the office of justice of the peace of Pilar was vacant. It was on the last mentioned date that the respondent entered upon the performance of his duties in that office.

Petitioner joined the police force of the City of Cebu as lieutenant from June 11, 1947, to January 15, 1948. From January 16, 1948, to April 24 of the same year, he was Assistant Provincial Warden (Exhibits A, B and C).

That petitioner was forced to seek or accept these jobs in order to live would not alter the case even if we assume, for the sake of argument, that economic necessity was a valid plea. The government was not the only source of gainful employments that could have tied him over while waiting, as he says, for reappointment to his old position. The truth is that for almost two years after liberation, before he accepted other government positions, he got along outside the government. All that time, when his old position was without any permanent incumbent, he did not enter public service, and he did not raise a finger to claim his judicial post. It would seem that he lost all interest in the same until he changed his mind or found he had made a mistake.

The petition is dismissed with costs.

Moran, C. J., Parás, Feria, Pablo, Perfecto, Bengzon, Briones, and Montemayor, JJ., concur.

Petition dismissed.

[No. L-986. January 26, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. FELIX ALCÓVER, defendant and appellant

CRIMINAL LAW; TREASON; APPELLANT'S PARTICIPATION IN THE ARREST OF GUERRILLA SUSPECT AS GIVING AID AND COMFORT TO THE ENEMY; ACT UNDER COMPULSION BUT NOT SO IRRESISTIBLE CONSTITUTES ONLY A MITIGATING CIRCUMSTANCE.—There is not doubt that appellant, to give aid and comfort to the Japanese, took part in the arrest of the B sisters, for their guerrilla activities, but we do not believe that he deserves the penalty imposed upon him by the trial court. There is reason to believe, upon the testimony of the accused, that he must have acted under compulsion by the Japanese but not so irresistible to exempt him from all responsibility, but enough to mitigate it under paragraph 5 of article 12 and paragraph 1 of article 13 of the Revised Penal Code. The guilt of the accused is not so grave that when this court voted for the first time whether to convict him or not, we were deadlocked in a tie vote, that we had to order a rehearing as provided by the rules.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Eufrazio Ocampo for appellant.

Assistant Solicitor General Carmelino G. Alvendia and
Solicitor Francisco Carreon for appellee.

PERFECTO, J.:

Felix Alcover appealed from a decision of the People's Court finding him guilty of treason and sentencing him to suffer *reclusión perpetua* and to pay a fine of ₱5,000 and the costs.

Appellant is accused of treason on three counts, one for acting as informer, undercover or spy of the Japanese *Kempei-Tai*, another for his participation in the arrest of Anita and Rosario Bacani, intelligence operatives of the guerrillas, and the third for his part in the arrest of Francing Bacalla, for the latter's guerrilla activities.

At the hearing the accused admitted being a Filipino citizen by birth. (9). The substance of the testimonies of the witnesses for the prosecution is as follows:

Rosario Bacani, 17, single, beautician, Cebu City, testified that the accused was during the enemy occupation an undercover giving help to the Japanese. He happened to go to Calamba and he shot a guerrilla. On January 13, 1945, at 2 o'clock, Japanese and undercovers arrested the witness. Among those who arrested her were the

accused, Maximo Bate, Jose de Castro, Maneng Hernandez, Alfonso Castro. She was hanged for about thirty minutes, she was told to stand on a bench, and tied on the back, and she was kept hanging on a piece of the wood attached to the ceiling of the house. The accused was carrying a revolver. (3-4). She was tied by Maximo Bate and the Japanese. The accused was guarding her brothers and sisters. When she went down, she was tied with a rope and the accused was the one handling it. He was dragging her by it. Both of her hands were tied in front and she was taken by truck to Cebu City. Anita and Ricardo Bacani, her sister and brother, were also arrested. Yoshida, a Japanese, was living in Sanciangko Street. (5). At the time the witness was staying with Yoshida, the accused was giving a daily written report to Yoshida. He handed them to Tariyama who in turn gave them to Yoshida. The witness believes that they were given to Tariyama who gave them to the chief of the *Kempei-Tai*. (6). The reports were about guerrilla activities. The accused had been submitting them until the Americans came. The witness stayed with Yoshida for about a month. The witness was present when the accused submitted those reports to Yoshida, so it had been easy for them to arrest those who cooperated with the guerrillas. (7). On February 3, 1945, the witness was released by Yoshida. Between February 22 or 23, the accused, Jose de Castro and Maximo Bate took her from her house and the accused told her that she would be brought to the Normal School and killed. She was brought instead to the house of Yoshida in Sanciangko Street. When Yoshida came, he told her that she was so fortunate that she was not killed because of a grave accusation; that they intended to kill her that very day, and that they then asked her which she preferred, life or death. And she chose the former. Her mother was told to go to Yoshida's house. Yoshida took the mother to a room where they had a conversation. After the conversation "my mother approached me; she told me that Yoshida told her that I would be left; without any hesitation my mother left me; and from that time I was staying in that house that I came to know the accused." The accused was telling the witness to tell the truth "that we were working in the guerrilla". The witness was really working with the intelligence department of the guerrillas. (8). The witness happened to know of the activities of the accused when she was in Sanciangko Street, where she stayed from February up to March 26, 1945. (9). The witness lived as the common-law wife of Yoshida. Her sister worked as *telefonista* with the Japanese because they have no means of living and she was connected with the guerrilla. (10). Her sister did not work voluntarily but because they had no means of livelihood and in order

to help in getting information regarding the Japanese activities. There were about ten persons living with Yoshida in Sanciango Street. They were Felix Alcover, Jose de Castro, Manuel Hernandez, Filomeno Nocon, Conrado Poo, and Marcos, a little boy. That is all. (11). The witness happened to be at Sanciango because she was brought there by the accused. She happened to be a common-law wife of Yoshida as a victim of circumstances. She could go freely in the house but she could not go to P. Padilla Street without guard, and her guards were Felix Alcover, Jose de Castro, Bate and others. Regarding reports given by the accused to Yoshida "I could not assure what were inside the papers, but I have read before that about guerrilla activities." (12). The witness cannot name any guerrillero that was mentioned in any report. The witness does not remember how many Japanese were among those who arrested her. She was tied by a Japanese and Maximo Bate, and it was the latter who hanged her. (15). When Francisca Bacalla was arrested, she squealed about the witness and, because she did not know the witness' place, she pointed to Ricardo Bacani, her brother, to guide the Japanese to the witness' house. (16). Ricardo Bacani, witness' brother, was with a group of Japanese who arrested the witness. (17). Francisca Bacalla had been killed. She was taken from the prison camp by a Japanese. (18). The witness was a guerrilla under the command of Lieutenant Benoya. She took notice of all the Japanese activities and movements, ammunition dumps and everything in general about the Japanese. (19). When she was hanged, she was injured in her right and left breasts and in her shoulder joint. (20).

Anita Bacani, 23, single, cashier, Cebu City, testified that at 3 o'clock, January 13, 1945, Japanese and undercovers including the accused went to their house and arrested her because of her connection with the guerrilla. The accused carried a revolver. (21). The witness was hanged and beaten and the Japanese were threatening her family, which was guarded by the accused and whose members were asked to squeal the truth about their guerrilla activities. The accused told her: "Anita, tell the truth, so you will not be killed." While the witness was being maltreated, the accused was guarding her father, mother and sister. (22). The witness was hanged and boxed. Her hands were tied at her back and she was hanged without touching the floor. The accused was convincing her father to tell the truth. He said to the witness that if she did not tell the truth, she would be killed. Afterwards, the witness was brought by the accused to the *Kempei-Tai* at the house of Dr. Cologado. (23). After her arrest, the witness saw the accused with the Japanese *Kempei-Tai*

and undercovers. No one was permitted to go with the Japanese undercovers unless he was one of them. The witness saw the accused and the *Kempei-Tai* in Cebu City. As a result of the maltreatment, the witness had a shoulder blade broken and an arm dislocated. Before January 13, 1945, the witness was employed as telephone operator under the Japanese and later in the Commissioner's office. She started to work as telephone operator since her father was arrested in January, 1943 or January, 1942. She worked with the Japanese because her intention was to get information for the guerrilla. She used to contact guerrilla men. Her salary as telephone operator was ₱32.60 and in the Commissioner's office ₱80 monthly. (26). The witness reported to her official as undercover the accused Jose de Castro, Nocon, Pablo Labra and others. She was reporting to Lieutenant Benoya. (27). At the time the witness was arrested, her brother was in the group because he was arrested when Francisca Bacalla was arrested. Francisca was the one who pointed to her brother. Her brother, Ricardo, was tied up. The arrest took place at about 2 o'clock dawn. The witness had another brother, Jose who was killed. (28). Those arrested on January 13, 1945, were the witness, and her sister Rosario and brother Ricardo. Ricardo was arrested in Calamba, while the witness and her sister Rosario were arrested in Bulacao. (29).

Francisco Benoya, 27, married, photographer, Cebu City, testified that during the Japanese occupation he was operating somewhere in Badian, Pardo (32). He was an officer in the army as G-2, his duty being to observe movements of troops and military installations. He had as operatives in Cebu City Anita and Rosario Bacani and Francisca Bacalla. They used to submit reports sometimes written, sometimes verbal. (33). Exhibit A is a report he received from Candido Ibañez. Sketch Exhibit B is based on information given by Rosario Bacani. (34). The information regarding the location of the sentries and the number of Japanese in each garrison was furnished by Rosario. (35). The witness gave to Anita and Rosario Bacani good money and Japanese money for operating expenses. (41).

Pascuala Bacalla, 34, single, merchant, Cebu City, testified that she had come to know the accused since she was a member of the guerrilla. (42). During the Japanese occupation, he was a member of the Philippine Constabulary under the Japanese. On January 12, 1945, the witness was engaged in the buy and sell business in Minglanilla. Upon arriving at the place near Labangon, she encountered the accused and other eight undercovers, including Pacho. Her cousin Francing Bacalla was apprehended by the accused, Pacho and their companions. Since

then Francing Bacalla did not return. (43). After her arrest, Francing Bacalla was brought to the *Kempei-Tai* in Carlock Street. All those who arrested him, including the accused, were armed with revolvers. The witness does not know the motive for the arrest of Francing Bacalla who at that time was riding in a rig. (44). The witness was present in the arrest "because we were together. We came from buying things." Those who arrested her did not say any word. Only the witness and Francing Bacalla were there in the tartanilla. (45). The witness came to know the accused when he was yet a member of the guerrilla and he was not yet an undercover. She used to see him then when she was sleeping in the house of Francing Bacalla. The accused was an undercover because she had connection with Jaucian P. C. headquarters. (46). The witness saw him at the Japanese headquarters. (47).

Roque Cuasito, 23, married, Cebu City, testified that he has known the accused since the Japanese occupation. (47). He was a member of the P. C. and later on an undercover. He was with a gun in going with the Japanese patrol. The witness saw him as such twelve times and he was armed on those occasions. In one case the witness heard him telling that he was about to shoot a guerrilla lieutenant. (49). The witness was also a member of the P. C. during the Japanese occupation. He also carried a rifle during the bombing. He was in a company different from that of the accused. (49). The witness heard that the accused had resigned from the Philippine Constabulary. He saw the accused with revolver going with Japanese in the *Kempei-Tai*. (50).

Rosario Bacani, called again to testify, declared that she learned that Francing Bacalla was killed because H. Yoshida told her so without mentioning the date of the killing. (52). Conrado Boo, 22, single, merchant, Cebu City, testified that he had been with the accused during the Japanese occupation. The witness was a cook of H. Yoshida, chief of the *Kempei-Tai*. The accused was an undercover. He was carrying a revolver and the witness saw his identification card; his pistol had identification too. (54). Francing Bacalla was apprehended and brought to the house of Yoshida. Her apprehenders were the accused and Pacho. The witness saw Francing Bacalla as she was being brought to the house of Yoshida. Francing was investigated. She was undressed by the accused and Pacho. Her hands were tied behind her back and she was suspended on the air undressed. The accused and Pacho both carried arms, revolver, .38 caliber. The witness heard from the accused and from Rosario Bacani that Francing Bacalla was already dead. (55). According to the accused, Francing Bacalla was killed by the *Kempei-Tai*. The witness knows Rosario Bacani because she was brought

by the accused and she became a common-law wife of Yoshida. Rosario was always crying and sad about her situation. She used to serve the Japanese and washed clothes. (56). The accused was given salary by Yoshida as undercover. He was living in the house of Yoshida. The witness had served as cook of Captain Jausian of the B. C. and there he came to know that the accused was a member of the B. C. before becoming an undercover under Yoshida. (58). The witness served as Yoshida's cook for about three months in 1944. He left about July or August. (59). The accused used to receive orders from Yoshida and go on patrol with him. (60).

The witness for the defense testified in substance as follows: Felix Ernane, 22, married, laborer, Cebu City, testified that on January 13, 1945, in Labangon where he was living, a lady was apprehended in the market place. The accused was not among those who were present on the occasion. (63). During the Japanese occupation the witness saw the accused carrying a revolver because he was a member of the P. C. (64). He was his friend before the war. (65).

Felix Alcover, 21, married, the accused, testified that he was a member of the Philippine Constabulary but not a Japanese spy. At the outbreak of the war he was working on the steamship Legaspi. On December 8, 1941, he volunteered for enlistment in the army. He was inducted as a soldier and stationed in Mandaue. (67). His commander was Lieutenant Cadileña. When the Japanese landed in Cebu, they retreated to the mountains. On June 28, 1942, he came down to look for his parents, whom he met in Pacola. On June 5 or 6, the witness was arrested by the Japanese. He was brought to the Snead Dormitory where he was investigated whether he was a member of the Usaffe and where his arms were. (68). He was tied and put inside a cell, where a companion, Margarito Campos, untied him. Fifteen days later, they were taken by Major Cruz. The witness was brought to the P. C. headquarters. Given the choice of enlisting in the P. C. or being arrested and killed by the Japanese, the witness offered to be enlisted and stayed in Major Cruz' office where he worked until October, when he escaped and went to the mountains and reported to the command post of Lieutenant Abella. (69). The station was in Bocawis, in the mountains of Carcar. In September, the witness was sent to San Fernando where Captain Navarro made him a member of the headquarters company. In April or May, 1943, the Japanese made a mopping-up operation and, upon orders to disband, the witness went to Clarin, Bohol, where he remained until June, 1943. (70). Then he returned to Cebu to report to Lieutenant Abella with whom he remained until he was arrested

for the second time by Marcha and Watanabe at Calamba. Watanabe investigated him for the whereabouts of Captain Navarro and Lieutenant Basillote. The witness answered that he did not know because he was in Bohol. After the investigation, Watanabe issued a pass for him and told him to enlist in the Philippine Constabulary so that he would not be taken to the M. P. The witness then escaped and went to the C. P. (command post) of Lieutenant Abella. (71). Abella investigated him why he was arrested. While in Cabacolan, Lieutenant Abella ordered him to put some dynamite in the house of Major Laput and the academy. He put the dynamite in a *buri* bag and proceeded to the city. Upon reaching the residence of Major Laput, he found it was surrounded by soldiers and P. C's. Because he could not place the dynamite, he went to Calamba and then returned to Cabacolan to report to Lieutenant Abella who said "maybe you are a spy. Why did you not put the dynamite in the residence of Major Laput," and told him that if he could not put the dynamite he would better not come back to the C.P. (72). The witness returned to the city but did not bring with him the dynamite. He proceeded to Padilla Street and looked for his friends. He saw Anita Bacani, who was his friend then employed as a telephone operator by the Japanese, and told her to be careful because the majority of employees under the Japanese were being arrested by the guerrillas. While living in Calamba, the witness was apprehended by some Filipinos. Dictong and others worked under the M. P. He was brought to the Normal School building at night time and put in prison where he saw his friends in the mountains such as Johnny Laurel and Pedro Labra. They were prisoners. (73). In December, the witness, not being released, was simply turned over by the Japanese to the command of Major Laput, who investigated him about his escape to the mountains. The witness answered that he went to the mountains because his parents were there. Major Laput told him to stay in the headquarters because he was still weak. The witness was put in the cell as a prisoner and was asked whether he preferred to enlist in the P. C. or go back to the Normal School building. (74). He said that he would enlist in the P. C. His first assignment was to clean Major Laput's table. When he got well, he was assigned to be a guard at the headquarters and sometimes as a traffic officer. About the month of October, 1944, he met Rosario Bacani on the street and asked her, "who is your husband now?" She answered, "A Japanese." "Oh, a Japanese," the accused said. "Well, your sister Anita is wanted by the guerrillas and you are also going to be wanted by the guerrillas because your husband is a Japanese." (75). In December, 1944, the witness was fired at in the intersection of Sanciango and

Leon Kilat Streets. He was wounded. He did not know who fired at him. He was then under the command of Lieutenant Flor of the Philippine Constabulary. He was brought to the Japanese hospital. (76). There he stayed about three months. First he was treated by a Filipino, then by Japanese doctors. It is not true that on January 13, 1945, he went to the house of Anita and Rosario Bacani to arrest them, or that he went to Labangon accompanied by Japanese to arrest Francino Bacalla. Francino Bacalla was apprehended by Vicente Cobarrubias and Manrique. (77). The witness came to know Rosario Bacani because she was his classmate before the war. He came to know Anita when he was under the command of Lieutenant Abella. He did not know whether he was under the Japanese or under a puppet government. He knew that his high command were Filipinos. (78). When they were classmates, the witness was in good terms with Rosario Bacani. He did not have any trouble with her. (80-81).

After a careful analysis of the evidence on record, we have come to the conclusion that no overt act of treason was committed by appellant, under the two-witness rule, except his active participation in the arrest on January 13, 1945, of the two sisters Anita and Rosario Bacani, intelligence operatives of the guerrillas, who were maltreated and then confined for some time. According to Rosario Bacani, the accused was carrying a revolver. After her maltreatment, her hands were tied and it was the accused who dragged her by the rope to be taken to the truck that brought them to Cebu city. According to Anita Bacani, the accused took part in her arrest on January 13, 1945. He was carrying a revolver, and even told her to tell the truth so that she would not be killed, and at the time that she was being maltreated, the accused was guarding her father, mother and sister.

There is no doubt that appellant, to give aid and comfort to the Japanese, took part in the arrest of the Bacani sisters, for their guerrilla activities, but we do not believe that he deserves the penalty imposed upon him by the trial court. There is reason to believe, upon the testimony of the accused, that he must have acted under compulsion by the Japanese but not so irresistible to exempt him from all responsibility, but enough to mitigate it under paragraph 5 of article 12 and paragraph 1 of article 13 of the Revised Penal Code. The guilt of the accused is not so grave that when this Court voted for the first time whether to convict him or not, we were deadlocked in a tie vote, that we had to order a rehearing as provided by the rules.

We believe that, for the purposes of justice, it would be enough to impose upon the accused 12 years and 1

day of *reclusión temporal* and to order him to pay a fine of ₱2,000 with costs.

Thus modified, the appealed decision is affirmed.

Moran, C. J., Ozaeta, Tuason, and Montemayor, JJ., concur.

PABLO, *M.*, concurrente:

Las pruebas obrantes en autos demuestran claramente que el acusado había tomado parte en el arresto de las hermanas Rosario y Anita Bacani porque prestaban servicio a las guerrillas; tomó parte no solamente en su arresto sino también en su maltrato. Rosario Bacani había sido colgada por más de 30 minutos como si fuese una criminal. Cuando ella fué descolgada, el acusado fué el que, con el cordel en mano, la condujo a un truck para ser transportada a la Ciudad de Cebu. Anita Bacani, con las manos atadas en la espalda, había sido también colgada por el acusado y sus compañeros. El acusado, para congraciarse tal vez con los oficiales japoneses, convencía no solamente a ella sino también a sus padres para que dijeran que ellos prestaron servicio a las guerrillas. Por los maltratos, Anita ha tenido fractura en la escápula y un brazo dislocado.

Ya hemos dicho más de una vez que la guerrilla es una parte indispensable en toda guerra de resistencia, especialmente cuando el ejército queda desorganizado por la invasión. Entonces es cuando la guerra de guerrillas es necesaria. Durante la ocupación, la ayuda de la población civil a las guerrillas era necesaria. Y esa ayuda no se podía efectuar sino mediante intermediarios. Este papel desempeñaban las hermanas Bacani.

Para aislar a las guerrillas de la población civil—que les daba municiones de boca y guerra—había necesidad de suprimir a los intermediarios. Por eso los japoneses hicieron implacable persecución a los que ayudaban a las guerrillas. Emplearon la tortura en todas sus formas nunca imaginadas para sembrar el terror en todas partes. Y el acusado prestó sus servicios en esta campaña no por la fuerza sino con gusto. Si las dos hermanas hubieran muerto como resultado de las torturas, no hay duda alguna, de que impondríamos al acusado la pena correspondiente al delito de traición en toda su rigidez. Porque Rosario no murió sino que fué convertida, en mala hora, en instrumento para saciar la sed sexual de Yozida, ha de merecer menos pena el acusado? No es una verdadera ignominia convertir, por la amenaza de muerte, a una doncella en manceba de un oficial del ejército enemigo? Hay mayor desgracia y escarnio para una señorita como estar a la merced de los caprichos bestiales de un oficial del ejército invasor? Hay que tener en cuenta que Rosario no era una traficante profesional del placer: era una señorita

de apenas 16 años de edad, y la pérdida de su honra fué peor aun que la pérdida de su vida. La Convención de la Haya garantiza que "family honor and rights * * * must be respected" y el acusado, a pesar de todo esto, ayudó a Yozida, un oficial enemigo, a deshorrar a ella. Sin su ayuda, Rosario no hubiera sido presa de una fiera en forma de oficial.

No hay pruebas de que el acusado ayudaba a los soldados japoneses bajo compulsión; al contrario desempeñaba su cometido de espía y torturador con ínfulas de conquistador, induciendo aun a las hermanas Bacani y a sus padres que confesaran que ayudaron a las guerrillas. No creemos que la culpabilidad del acusado no sea grave como dice la decisión. Por él, un oficial enemigo consiguió deshorrar a una doncella que es peor aun que matarla. La mujer de cualquier país invadido tiene derecho a mejor suerte. De los hechos expuestos, no hay ni uno sólo que pueda atenuar la responsabilidad del acusado. Las disposiciones del Código Penal Revisado citadas en la decisión son del tenor siguiente: "No incurren en responsabilidad criminal: * * * 5.º El que obra violentado por una fuerza irresistible." (Art. 12, pár. 5.) "Son circunstancias atenuantes: 1.ª Las expresadas en el capítulo anterior cuando no concurrieren todos los requisitos necesarios para justificar el acto, o eximir de responsabilidad en sus respectivos casos." (Artículo 13, párrafo 1.º.) Estas disposiciones no son aplicables al caso presente, y, por tanto, no debe ser aplicada la pena en su grado mínimo.

Por tales consideraciones, voté por que se confirme la sentencia del Juzgado *a quo*: no estaba conforme en que se le imponga la pena en su grado mínimo.

Como no había mayoría suficiente en la votación, se señalo otra vez a vista la causa de acuerdo con la Regla 120, artículo 12 que dispone que: "When the court *in banc* is equally divided in opinion or the necessary majority can not be had, the case shall be reheard, and if in rehearing no decision is reached, the judgment of conviction of the lower court shall be reversed and the defendant acquitted."

Si insisto en mi opinión que sostuve en la primera votación, automáticamente quedaría absuelto el acusado, en menoscabo de la vindicta pública. Transigir para que no se frustren los fines de la justicia, como en el caso presente, no es claudicar.

Por tanto, concurre hoy con la mayoría: que se le imponga al acusado la pena en su grado mínimo; pero que no se le absuelva, por una intransigencia injustificada.

PARÁS, J., dissenting:

The appellant, Felix Alcover, as a guerrilla, was caught two or three times by the Japanese military police and,

to save his life, upon the advice of Major Laput, he entered in the service of the Philippine Constabulary. Although charged with treason on several counts, the Solicitor General admits that only one count has been proved by the testimony of two witnesses. This concerns the arrest and torture of the Bacani sisters, Rosario and Anita, which took place on January 13, 1945. Appellant denies having taken part in said arrest and torture and alleges that at the time thereof, he was confined in the hospital because he was wounded by a gun-shot fired by an unknown person in December, 1944, at the intersection of Sanciango and Leon Kilat Streets. Naturally he should have been in the hospital until January, 1945. Against his testimony, there is only that of the offended sisters. The first had been a *telefonista* in the office of the Japanese, and the second was the mistress of a Japanese commanding officer. Even if we admit the truth of their statements, we do not find in the acts imputed to the appellant clear proof of treason. He simply accompanied the Japanese soldiers, at the request of the latter and upon information from one Francisca Bacalla, that the two sisters were members of the guerrilla. Their house was indicated by the brother of said sisters who also accompanied the Japanese. True, he gave the remarks "to tell the truth" while the persons arrested were in the garrison, evidently so as to soften the irate feeling of the Japanese. For all we know, appellant's intervention had saved the lives of the sisters. They were his friends even before the war; but he happened to provoke the enmity of said women when he made some derogatory remarks to the CIC about them.

I vote to acquit the appellant.

FERIA, J.:

I concur in this dissenting opinion.

BENGZON, J.:

I concur in the above dissent.

BRIONES, J.:

I concur in the foregoing dissenting opinion.

Judgment modified.

[No. L-1620. January 26, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
RUPERTO ARANGUREN ET AL., defendants and appellants

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; EVIDENCE; MOON; IDENTITY OF THE ACCUSED.—The participation of A in the crime has been proved beyond reasonable doubt. It was a moonlit night, and G and his wife positively identified him, and they could not have been mistaken because appellant was a neighbor and A had known him since their childhood.

2. ID.; ID.; ID.; ALIBI AS A DEFENSE.—The defense of alibi offered by the accused has no weight at all, not only because of the material contradiction between the testimonies of A and B,—the latter denying having participated in the dice game, while A said that B played the game,—but because when A was questioned by the chief of police, who ordered his apprehension that night for his suspicious attitude, A did not say that he came from the *barong-barong* where the dice game took place but from B. His explanation at the witness stand that he lied because he knew that dice was a prohibited game, is too silly to be accepted. There was no compelling reason for him to confess that he violated the law by playing dice or to lie by alleging that he came from B as, at the time, the chief of police did not yet have any incriminatory evidence against him. While the thought of lying that he came from B seems rather to fit conveniently in the theory of the defense as the first fabricated alibi which the accused wanted to offer to show that he had not been in the scene of the crime, he did not press it for lack of corroborating witness, and had to shift to the dice alibi after A was able to secure the conformity of B to appear as a witness for A. Lastly, even if we should accept that A had been in the dice game from 9 to 12 o'clock in the night of the crime, that fact does not preclude his having participated in the commission of the crime which, according to the witnesses for the prosecution, took place at "about midnight" which includes the time from 12 to 2 o'clock, the time when people gathered to attend to M. C., the wounded man, and the investigation of the crime started.

APPEAL from a judgment of the Court of First Instance of Laguna. Yatco, J.

The facts are stated in the opinion of the court.

Lucio Robles & Tomas Dizon and *Jose A. Buendia* for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Antonio A. Torres*, for appellee.

PERFECTO, J.:

On the night of November 6, 1946, while sleeping in their house in barrio Santa Maria, San Pablo City, Gaudencio Pere and his wife Angelina Hernandez were awakened by armed persons pretending to be authorities. Two of the three intruders entered the dining room while the third, who turned out to be Ruperto Aranguren, remained in the balcony. Gaudencio was ordered to go down with one of those who were in the dining room, who followed him behind with a gun. The one who remained inside the house ordered Angelina to produce money and jewelries. She produced ₱65, and, when ordered to produce more because she was known to be a merchant, she showed her bamboo *alcancia* (meaning any kind of container where money is concealed or deposited). (4 & 5). While the *alcancia* was being opened with a bolo by the intruder with the help of Angelina, a gunshot was heard and the intruder ran away without having been able to get the money, and at that time Angelina heard Magno Correa

shouting "Gaudencio, I am shot, I will die." Angelina went down to join her husband and then went to the house of her aunt Baldomera Hernandez. She saw Magno Correa dying from a wound. Magno was brought to a hospital where he died early the next morning. Angelina identified Aranguren to be one of the malefactors because he was living in the same barrio and she knew him since his childhood. (6 & 7). Angelina further testified that the deceased was shot by Aranguren because he was the one near a banana tree where Magno Correa was shot, while one of his two companions was with her inside the house and the other was guarding her husband near a coconut tree, about 6 arms' length from the place where Aranguren was. (11). The incident happened at midnight. The moon was bright and its light penetrated the surroundings. Angelina's house was surrounded with coconut and lanzones trees and banana plants. (12). Her husband was brought at 3 arms' length from the house. (13).

Gaudencio Pere testified that on the midnight in question he obeyed the order of the intruders to go down, leaving his wife upstairs. (16). He was ordered not to look behind by one of the intruders who "was aiming his gun at me." Of the remaining two intruders, one was left in the house "asking money from my wife, and the other whom I recognized as Ruperto Aranguren toward the banana plant." He was brought near a coconut tree. He was ordered not to face his guard or else he would be killed, and while he was facing the coconut tree he heard a shot and the intruder guarding him went near the banana plants and said "Let us go," and then Gaudencio heard someone saying he will die. When the robbers left, he went running toward the house of his aunt. (17). His "supposition" was that Magno Correa was shot by Aranguren "because he (Aranguren) was the one standing near the banana plants. Immediately after I heard the shot, I saw him to be near Magno Correa." The first person to arrive at the place where Magno Correa was wounded was the latter's wife. (18). When Gaudencio arrived at the place there were also Maximo Ilagan and Valeriano Correa besides Correa's wife. After bringing the wounded to the poblacion, Gaudencio want to see a policeman and then the chief of police, to report that they were robbed, and the only name he mentioned to them was that of Ruperto Aranguren. (19). At the time Gaudencio was taken down the house, Aranguren went ahead towards the banana plants. (23). Before Gaudencio heard the shot, Aranguren was near the banana plants and after he heard the shot, he saw the intruders running, carrying long guns. (24). Gaudencio recognized Aranguren "when he was in the house because the light was behind him." (25). When

Gaudencio saw Aranguren later with the chief of police, he saw him in wet clothes and shoes, because probably he crossed rivers. (26).

Chief of Police Gertrudo San Pedro testified that, before Gaudencio Pere reported to him the robbery, and while on patrol in the vicinity of Aglipay Street, he saw somebody approaching. Because it was dark, he focused on him his flashlight and it seemed to him that the man was running, and he ordered Felipe Endralino to run after him. The person apprehended happened to be Aranguren who said that he came from barrio Botocan to watch the lanzones trees of his uncle Felix Artificio. The chief of police investigated Aranguren suspicious of him because he had his clothes and shoes wet even if it was not raining. "I investigated him and as he had nothing to conceal I released him." After Gaudencio Pere informed the chief of police of the incident, said officer ordered the apprehension of Aranguren, who was taken to the municipal building in the early morning. (29-30). Aranguren, when first apprehended, carried no firearm. He said that he was wet because he passed several rivers. (32).

Isabel Santos testified that her husband Magno Correa was shot behind the house of Gaudencio Pere. (33). Magno was shot at about 20 meters from their home. She went to the scene with her brother-in-law. (34). Her brother-in-law asked her husband what happened to him, and her husband answered that he "was shot by Perto" (the witness pointing to Aranguren). Her husband did not give any description of the person who shot him except by naming him as "Perto," by which name appellant was known in the barrio. (34). When her husband mentioned the author of the crime, he was in a "serious condition, dying down," and was himself the one who suggested that he be brought to the hospital. (36).

Felix Artificio, defense witness, barrio lieutenant, testified that upon arriving at the scene of the crime he asked Gaudencio Pere what had happened, and Gaudencio stated that two persons had gone to his house to rob, but that he was unable to identify them because their faces were covered. (40). He made the investigation at 11 o'clock in the evening of November 6, 1946. (41). Aranguren is the witness' stepson. (42). The witness was present when the chief of police asked the wounded man (Magno) if he recognized the robbers, and he answered that "he did not see any person." (44). When the witness saw his stepson Aranguren in jail at the San Pablo City Hall on November 8, 1946, he did not ask the chief of police why his stepson was arrested. Witness admitted that on November 9, 1946, he went to the fiscal's office to inquire about the information against Aranguren, and that the fiscal informed him that he was still completing

the evidence. He also admitted that two days later, on November 11, he came back to the fiscal's office asking if the case could be fixed and that the fiscal told him no. (46-47). He however alleged that he had no interest in his stepson, although he admitted he had gone to Attorneys Dizon and Robles and asked them to defend the accused. (48).

Alberto Rosales testified that he was present when the barrio lieutenant asked Magno Correa if he recognized the person who shot him and that Magno answered that he did not recognize him. (50-51). He was also present when the chief of police asked Magno about the same thing and Magno replied that he did not know who wounded him because he did not see, and this answer was given during the investigation made in the hospital at about 2 a.m. on November 6, 1946. (52). A week after the incident, Felix Artificio told the witness that he would be used as a witness in this case. (53). The witness was also present when Gaudencio Pere was asked by the barrio lieutenant about what had happened and Gaudencio answered that he was robbed by two persons whom he did not know. (55).

Ricardo Pandialan testified that he was present in the house of Magno Correa when the latter was asked by Felix Artificio what had happened to him and when Magno said that he did not see the person who fired at him, and that was the only conversation between the barrio lieutenant and Magno. (64). Since the incident took place, Felix Artificio had already asked the witness to testify in this case. (66).

Francisco Bondiginio said that he was present when the barrio lieutenant investigated Gaudencio Pere and Angelina Hernandez (67) and when Gaudencio said that he was robbed of two 50-centavo pieces, but said nothing more. (68).

Alfredo Barrento testified that on the night of November 6, 1946, he saw Aranguren on Aglipay Street, San Pablo City, in a *barong-barong* where people were "enjoying the game of dice." He saw him there at 9 o'clock. He left the place at 10, but returned at 11 and remained up to 12; and during that time he saw the accused in the dice game. After 12 o'clock he did not see him anymore. (70-71). As to the trial of the case, the witness was informed by Felix Artificio one week earlier. (71-72). The witness did not remember whether before November 6, 1946, that *barong-barong* was closed. The last time that he went there was on November 8, 1946, and it was closed. (75). It was Felix Artificio who notified him of the trial of the case. The Sunday following November 6, 1946, the witness met Felix Artificio in a cockpit and there Artificio told him that as soon as the trial is called

the witness may testify to the effect that he saw the accused in the evening of November 6, 1946, at the *barong-barong*. (76).

Ruperto Aranguren, the accused, testified that in the evening of November 6, 1946, "I cannot tell exactly whether (I was) in my house or in the dice game." His house is near the place where the said game was being played on Aglipay Street. At about 12 o'clock in the evening of November 6, 1946, he was playing dice. After eating supper at 8 o'clock he went to the place where the game was being held. At about 12 o'clock he went out "because I felt warm. I went to the store of Andoy near the dice to buy cigarettes but the store was closed. When I was to return, I met the chief of police and he asked me where I came from and I answered that I went to Botocan to look for the lanzones of my father-in-law. When I met him that evening I was going home to sleep. At early morning of the following day I was awakened up by the authorities and told that I was wanted." When he met the chief of police he was not wet. (77-78). He saw Alfredo Barrento in the dice game at 9 o'clock that evening. Barrento was playing. (80). He was there from 9 to 12 o'clock that night. Asked to explain why Barrento testified that he did not play, the accused said that he believed that Barrento was playing because he was inside the place. The accused told the chief of police that he came from Botocan "because I know that the game of dice was prohibited." (81).

Gertrudo San Pedro, chief of police, testifying on rebuttal, said that although it is true that he went to the hospital to investigate upon receiving news of the robbery, he was not able to get "any answer because the wounded man was delirious at that time." (85). He belied the testimony of Felix Artificio who said that he conducted an investigation and reported to the chief of police to the effect that the wounded man and the spouses Gaudencio Pere and Angelina Hernandez told him that they did not recognize the assailant. Artificio did not make any report. What he said was that he had no knowledge about the incident. (86).

The evidence points conclusively to Aranguren as one of the trio who robbed the house of Gaudencio Pere at about midnight on November 6, 1946, although his two companions could not be identified by the witnesses for the prosecution. Two of them went inside the dining room, and from there one of them brought Gaudencio Pere down and made him stand facing a coconut tree, guarded at his back by one of the intruders, while the other remained inside the house to demand money and jewelry from Angelina Hernandez and, after receiving from her ₱65, was unable to open a bamboo *alcancia*. Arangu-

ren at first posted himself in the balcony and then went down to where the banana plants were, just before Gaudencio Pere was brought near the coconut tree by one of his companions. While the intruder who remained inside the house was engaged, with Angelina's help, in opening the bamboo *alcancia*, a shot was heard and then the voice of the wounded person was heard from the ground near the house. The robber watching Gaudencio Pere went to call his companions and the three of them ran away. Magno Correa was subsequently found lying down wounded by a gunshot, by his wife and several persons including a brother and Gaudencio Pere and his wife. According to Gaudencio and Angelina the three robbers were all armed with long firearms.

The participation of Aranguren in the crime has been proved beyond reasonable doubt. It was a moonlit night, and Gaudencio and his wife positively identified him, and they could not have been mistaken because appellant was a neighbor and Angelina had known him since their childhood.

The testimony of Felix Artificio and other witnesses for the defense, to the effect that Gaudencio told the former that there were only two robbers and that he could not identify anyone of them because they had their faces covered, do not deserve credence. Artificio denied repeatedly having any interest in the plight of Aranguren, notwithstanding the fact that Aranguren is his stepson, that he had gone twice to see the fiscal to inquire about the case and to ask if it could be fixed, and that he was the one who had taken pains to gather witnesses for his defense. The witnesses he called to corroborate him do not improve his testimony. He is belied by the chief of police whose impartiality has not been impeached, and there is no showing why Gaudencio Pere should testify in court that the robbers were three and one of them was Aranguren, a barrio-mate with whom he had previously no personal trouble, if he saw only two robbers whom he could not identify.

The defense of alibi offered by the accused has no weight at all, not only because of the material contradiction between the testimonies of Aranguren and Barrento,—the latter denying having participated in the dice game, while Aranguren said that Barrento played the game,—but because when Aranguren was questioned by the chief of police, who ordered his apprehension that night for his suspicious attitude, Aranguren did not say that he came from the *barong-barong* where the dice game took place but from Botocan. His explanation at the witness stand that he lied because he knew that dice was a prohibited game, is too silly to be accepted. There was no compelling reason for him to confess that he violated the law

by playing dice or to lie by alleging that he came from Botocan as, at the time, the chief of police did not yet have any incriminatory evidence against him. While the thought of lying that he came from Botocan seems rather to fit conveniently in the theory of the defense as the first fabricated alibi which the accused wanted to offer to show that he had not been in the scene of the crime, he did not press it for lack of corroborating witness, and had to shift to the dice alibi after Artificio was able to secure the conformity of Barrento to appear as a witness for Aranguren. Lastly, even if we should accept that Aranguren had been in the dice game from 9 to 12 o'clock in the night of the crime, that fact does not preclude his having participated in the commission of the crime which, according to the witnesses for the prosecution, took place at "about midnight" which includes the time from 12 to 2 o'clock, the time when people gathered to attend to Magno Correa, the wounded man, and the investigation of the crime started.

Although the Court is unanimous in finding Aranguren to be among the three intruders who committed the robbery in the house of Gaudencio Pere, the writer of this opinion disagrees with the majority concerning the probative value of the evidence tending to show the participation of Aranguren in the killing of Magno Correa. The majority is of the opinion that the dying declaration of Magno Correa, as testified to by his widow, coupled with the testimonies of Gaudencio Pere and Angelina Hernandez as to appellant's presence near the scene, are conclusive evidence that Aranguren was the one who fired the fatal shot. The writer of this decision opines that the dying declaration of Magno Correa is unacceptable because, under the circumstances, it was improbable for him to have been able to see the one who fired at him, and his widow's testimony as to said dying declaration has not, without any explanation, been corroborated by his own brother who was present at the time, and that the mere presence of Aranguren near the banana plants, as testified to by Gaudencio Pere, did not show beyond reasonable doubt that he fired the shot, aside from the fact that, according to Angelina Hernandez, Aranguren was in the balcony of their house.

With the dissent of the writer, who would impose upon appellant only the penalty provided by law for the crime of robbery, conformably with the majority opinion, the appealed judgment,—which found Ruperto Aranguren guilty of the *complex crime of robbery with homicide* and sentenced him to suffer the penalty of *reclusión perpetua* with the accessories of the law, to indemnify the heirs of the deceased Magno Correa in the amount of two thousand pesos (P2,000) and to return the amount of sixty-

five pesos (P65), and to pay one-third (1/3) of the cost,—is affirmed with the sole modification that the indemnity to the heirs of Magno Correa is raised from two thousand (P2,000) to six thousand pesos (P6,000), in accordance with the doctrine laid down in *People vs. Amansec*, L-927, 45 Off. Gaz., (Supp. to No. 9), 51. The appellant will also pay costs in this instance.

Moran, C. J., Parás, Ferial, Pablo, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

Judgment modified, indemnity increased.

[No. L-300. January 28, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
FILOMENO CASTRO (*alias* FELOMINO CASTRO), defendant and appellant.

CRIMINAL LAW; TREASON; EVIDENCE; CONVICTION MAY NOT BE BASED SOLELY UPON WRITTEN ADMISSIONS.—In treason cases the conviction of the accused may not be based solely upon written admissions; but they should be logically competent evidence in corroboration of the story of the witnesses for the prosecution; and it is in that light that they should be regarded.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Mariano Trinidad for appellant.

Solicitor-General Lorenzo M. Tañada and *Luis R. Ferial* for appellee.

BENGZON, J.:

For treasonable conduct during the Japanese occupation, the defendant Filomeno Castro, a Filipino citizen, was sentenced by the Fourth Division of the People's Court to life imprisonment and to pay a fine of P10,000, plus the costs.

He was tried under an information containing nine counts. However, after presenting his evidence, the special prosecutor withdrew counts 3, 4, 7, 8 and 9. And after the trial ended, the defendant was declared guilty of all the remaining charges, the decision setting forth the pertinent facts and circumstances.

As requested by appellant, we have reviewed the record to determine whether the finding of guilt is sufficiently justified.

On the first count there are proofs that shortly before the last war Filomeno Castro became a member of the Ganap Party and that soon after the Japanese occupation he, with other Ganaps, patrolled the barrio of Parang Norte, Mariquina, Rizal, for the Japanese, carrying arms and wearing the regular Japanese uniform; that he resided

in the Japanese garrison in Montalban, same province, later in the Japanese-controlled tannery in Meycauayan, Bulacan; that he went around with Nippon soldiers pointing out persons suspected or known as guerrillas and even helping in their apprehension; that in October, 1943, he accompanied Japanese soldiers to the house of Deogracias Esteban in sitio Bayanbayanan, Mariquina, to look for Manuel Soriano, and not having found him there, the party brought Esteban to the house of Ricardo Soriano, Manuel's father, where appellant slapped Soriano's sister for refusing to disclose to him the whereabouts of her guerrilla brother. (It seems that a few days after this the Japanese got hold of Manuel and tortured him.)

On the same count there is evidence that, having been released from the camp of the ROTC guerrilla outfit in barrio Tala, Mariquina, where he had been detained as a Ganap and Japanese spy, Filomeno Castro, armed and wearing a Japanese army raincoat led, one day in June, 1943, a patrol of 25 Japanese soldiers and one platoon of Constabulary men in a raid against that camp, as a result of which a guerrillero named Andoy was wounded by a hand grenade thrown by the raiders.

Establishing the fifth count, the prosecution demonstrated that at about ten o'clock in the morning of one day of November, 1943, while riding with several Japanese soldiers in an army truck, appellant Filomeno Castro saw Francisco Duliente in the barrio of Nangca, municipality of Mariquina, and knowing the latter as a guerrilla, Castro indicated him as such to his Japanese companions, whereupon the latter, about four in number, stopped the truck and pursued Duliente, who succeeded in eluding capture by running swiftly away. Appellant joined this pursuit firing with his revolver, caliber .45, several shots which fortunately missed Duliente. He would have continued pursuing Duliente (although the Japanese had already returned to the truck) had not Duliente returned his fire and showed a determination to face him alone.

In connection with the sixth count there is enough evidence to show that in the evening of March 12, 1944, Teofilo de Guzman, (sergeant of police) Pascual de Leon and Jose Atanacio were arrested as guerrilla suspects in barrio Calvario, Meycauayan, Bulacan by two Japanese soldiers and two Filipino spies (the herein appellant and one Mario). The arrested persons were brought to the Japanese garrison in that town where all of them were boxed by the Japanese, and were later marched to the municipal jail. Afterwards De Leon was taken to the guard-house and again tortured. Although De Guzman and Atanacio were subsequently released apparently through the good offices of Dr. Juan Chanliongco, Pascual de Leon was never heard from.

All the above counts have been established in accordance with the two-witness rule. The first, particularly the search for Manuel Soriano, a guerrilla, in the house of Ricardo Soriano, was seen and told by Deogracias Esteban, Rodolfo Soriano and Felisa de la Paz Soriano. (41-42, 166-170, s. n.; 1, 8, s. n., transcript of Rivera.) The second is supported by the testimony of Dionisio Epetia and Ernesto Sandiego some of the guerrillas who were in the raided camp in June, 1943. Two persons—Gabriel Urrutia and Fabian Villanueva—saw and declared about the frustrated attempt to catch Francisco Duliente. It may be true that ordinarily these witnesses could not have heard the particular words uttered by appellant in stopping the truck but it is quite probable that defendant's actions and their knowledge of Isko's condition as guerrilla (25 s. n.) led them to surmise or match his actions to his words. Anyway, that appellant pointed Isko, a guerrilla, to the Japanese and that the latter pursued Isko and appellant joined the chase is enough to sustain this charge, which is not at all overcome by his untenable defense of alibi.¹

As to the sixth count two of the arrested persons themselves declared against appellant. (Jose Atanacio and Teofilo de Guzman.) These have no reasons to falsely implicate him in matters involving life or death.

Appellant's second assignment of error needs no extended discussion, because supposing that his written statement (Exhibit A) was the result of tortures he received at the hands of guerrillas after liberation, and is legally inadmissible, the prosecution does not need to rely and does not here rely, on such document to obtain a verdict of guilt. On the other hand, the maltreatment he received at the hands of the underground forces, if any, does it not imply some fundamental reason, for instance, the raid he had led against them as stated in the second count or his presumably known activities as a Japanese informer?

In this connection it is markworthy that when Exhibit A was submitted to the court as containing voluntary admissions in writing of the accused, his counsel objected to it only upon the ground of its incompetency, his argument being that only confessions made personally by the accused in open court are available. Undoubtedly the conviction of the accused may not be based solely upon such written admissions; but they should be logically competent evidence in corroboration of the story of the witnesses for the prosecution; and it is in that light that they should be regarded.

In his third assignment of error, appellant's attorney argues that his client may not be convicted of treason

¹ Can not prevail over positive assertions of witnesses, who saw him and are not shown to be biased.

because the sovereignty of the United States and of the Commonwealth of the Philippines was temporarily suspended during the Japanese occupation. A debatable or open question at the time the brief for appellant was submitted, the point has subsequently been overruled in another case,² this Court refusing to validate such a theory which is so destructive of national integrity and public interest.

Wherefore, being convinced of appellant's guilt beyond reasonable doubt, we must approve the appealed judgment, because it accords with the legal provisions applicable to treasonous offenses by Filipino citizens. (Article 114, Revised Penal Code.)

Judgment affirmed. So ordered.

Moran, C. J., Parás, Fera, Pablo, Briones, and Tuason, JJ., concur.

PERFECTO, J., concurring and dissenting:

According to the uncontradicted testimony of appellant, he never studied in any school and he does not know how to read English. He knows a little how to read and write in Tagalog.

Upon this evidence, we are of opinion that appellant is entitled to the benefits of the mitigating circumstance of ignorance or lack of instruction and, therefore, the penalty that should be imposed is the minimum provided by article 144 of the Revised Penal Code.

We agree with the decision finding appellant guilty of the crime of treason.

We vote to modify the appealed judgment by reducing the penalty accordingly.

Judgment affirmed.

[No. L-1481. January 28, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
EUGENIO ABENDAN and PEDRO DE GUZMAN (*alias*
MORO), defendants. EUGENIO ABENDAN, appellant.

1. CRIMINAL LAW; TREASON; ACCUSED'S PATRIOTIC SERVICES RENDERED TO HIS COUNTRY.—The appellant, a college student of the Siliman University, was a member of the USAFFE who was sent to and fought in Bataan. Placed by the Japanese in the Capas Concentration Camp, the appellant was able to escape and to continue resistance against the Japanese. Prevailed to surrender, however, he was made chief of police, although he all the time remained in contact with the guerrillas. There is uncontradicted evidence to the effect that the appellant was instrumental in the release of many persons arrested and detained by the Japanese, and that E. D. was wanted by the guerrillas, and this circumstance is alleged by the appellant as one reason why he detained E in jail and why he wanted the Japanese to return E to appellant's custody.

² Laurel *vs.* Misa, 44 Off. Gaz. [April, 1948], 1176

2. **ID.; ID.; WITNESSES; TESTIMONIES OF ENEMIES.**—The truthfulness of S. A., O. S. and R. D. is doubtful, since they had every reason to be hostile to the appellant. The appellant ordered the detention of O. S. and R. D. because of certain criminal charges. S. A. had been investigated by the appellant for theft of cement belonging to the municipality of Manaoag. Indeed, the appellant once slapped and kicked R. D. in view of his admission that he had committed illegal acts. Moreover, it is improbable that the appellant would have utilized said individuals in perpetrating a heinous crime, without a showing that they were of his confidence.
3. **ID.; ID.; EVIDENCE; FLIGHT OF ESCAPE OF CO-PRINCIPAL; EXISTENCE OF TWO PROBABILITIES.**—It is not improbable that P. de G., who admittedly had connection with the Japanese garrison, was responsible for the death of E. D.; and his disappearance lends support to that probability. As a matter of fact, the prosecution has implicated him in this case as a co-principal. And where there are two likelihoods, that which is consistent with the presumption of innocence will be adopted.

APPEAL from a judgment of the Court of First Instance of Pangasinan. Mañalac, J.

The facts are stated in the opinion of the court.

Iluminado Rupisan-Mabalot for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Jose G. Bautista* for appellee.

PARÁS, J.:

The appellant, Eugenio Abendan, was convicted in the Court of First Instance of Pangasinan of the crime of murder and sentenced to an indeterminate penalty of imprisonment ranging from 12 years, *prisión mayor*, to *reclusión perpetua*, to indemnify the heirs of Enrique Doria in the sum of ₱2,000, and to pay one half of the costs. Pedro de Guzman was accused jointly with appellant but, upon motion of the fiscal, the information was provisionally dismissed before the trial as to Pedro de Guzman who was then still at large.

According to the theory of the prosecution, the appellant, chief of police of Manaoag, Pangasinan, during the Japanese occupation, asked Roberto Delfin and Olegario Samson to come to the municipal building on October 28, 1944. After the two had arrived, the appellant, considered a terror of the town, ordered them to bring out Enrique Doria from the municipal jail wherein he was then detained. As this order was not carried out in view of the resistance on the part of Enrique Doria, the appellant and one of his municipal policemen, Pedro de Guzman, themselves entered the jail and, after tying Doria's hands, took the latter out and boarded him in the carretela parked in front of the municipal building. With the five of them in the carretela which was bound for the cemetery, they stopped by the house of Simeon Arzadon, gate-keeper of the cemetery, from whom the appellant asked Olegario Samson to get the key of the cemetery's gate.

Arriving at the cemetery at 3.30 p. m., the appellant and Pedro de Guzman tied Enrique Doria to an acasia tree. After Simeon Arzadon and Olegario Samson had brought the necessary tools which they were ordered by the appellant to get, the two were asked to dig a grave into which the appellant and Pedro de Guzman pushed Enrique Doria who fell face downward. Upon order of the appellant, Roberto Delfin, Olegario Samson and Simeon Arzadon started to pour earth over the grave. As Enrique Doria was still alive and tried to get up, the appellant and Pedro de Guzman bound Enrique's feet with a rope and forced him to lie in the grave. Because Enrique was still trying to stand up, Pedro struck him on the neck with a crowbar, after which the appellant and Pedro stepped upon him and, when Doria still showed life, the appellant and Pedro took turns in chopping off Doria's ears. As soon as the grave was filled with earth upon order of the appellant and Pedro, everybody left.

The appellant denies having taken Enrique Doria to the cemetery and having caused his death in the manner related by the witnesses for the prosecution; and as a defense he alleges that Enrique Doria was taken to the Japanese garrison on the date in question, upon receipt by the appellant of a written order from the Japanese delivered by Pedro de Guzman, a noted spy having considerable influence over the Japanese in the locality; that appellant made representations for the return of Enrique Doria to the municipal jail, but the Japanese told him that Enrique was to be liquidated for being a bad man; that he left the garrison for the municipal building in the same carretela in which he, Pedro de Guzman and Enrique Doria rode to the garrison, without knowing what was to happen to Enrique thereafter; that he was later informed by Pedro de Guzman that the latter had killed Enrique Doria.

We are constrained to accept the theory of the defense. The appellant, a college student of the Silliman University, was a member of the USAFFE who was sent to and fought in Bataan. Placed by the Japanese in the Capas Concentration Camp, the appellant was able to escape and to continue resistance against the Japanese. Prevailed to surrender, however, he was made chief of police, although he all the time remained in contact with the guerrillas. There is uncontradicted evidence to the effect that the appellant was instrumental in the release of many persons arrested and detained by the Japanese, and that Enrique Doria was wanted by the guerrillas, and this circumstance is alleged by the appellant as one reason why he detained Enrique in jail and why he wanted the Japanese to return Enrique to appellant's custody.

While the prosecution failed to present as a witness the driver of the carretela that the appellant allegedly used

in bringing Enrique Doria to the cemetery, and while Roberto Delfin and Olegario Samson could not even remember his identity, the appellant nevertheless put on the witness stand the driver of the carretela used by him in taking Enrique Doria to the Japanese garrison and in returning from the latter place to the municipal building; and said driver (Liberato Pablo) corroborated appellant's testimony.

The truthfulness of Simeon Arzadon, Olegario Samson and Roberto Delfin is doubtful, since they had every reason to be hostile to the appellant. The appellant ordered the detention of Olegario Samson and Roberto Delfin because of certain criminal charges. Simeon Arzadon had been investigated by the appellant for theft of cement belonging to the municipality of Manaoag. Indeed, the appellant once slapped and kicked Roberto Delfin in view of his admission that he had committed illegal acts. Moreover, it is improbable that the appellant would have utilized said individuals in perpetrating a heinous crime, without a showing that they were of his confidence.

Upon the other hand, it is not improbable that Pedro de Guzman, who admittedly had connection with the Japanese garrison, was responsible for the death of Enrique Doria; and his disappearance lends support to that probability. As a matter of fact, the prosecution has implicated him in this case as a co-principal. And where there are two likelihoods, that which is consistent with the presumption of innocence will be adopted.

Even admitting, however, that the appellant was responsible for the death of Enrique Doria, appellant's participation must have had connection with his undisputed guerrilla activities, since Enrique was, according also to uncontradicted evidence, wanted by the guerrillas. Hence, he would properly come under the benevolent provisions of the Amnesty Act. Indeed, the appellant had previously applied for amnesty; and if he failed it was only because he refused to accept the condition that he had first to admit the killing of Enrique Doria.

The appealed judgment is therefore reversed and the appellant, Eugenio Abendan, acquitted with costs *de oficio*. So ordered.

Moran, C. J., Feria, Pablo, Perfecto, Bengzon, Briones, and Montemayor, JJ., concur

TUASON, J., dissenting:

I dissent. The evidence which is set out and ably discussed in the appealed decision is so conclusive and airtight as to satisfy the most fastidious mind. The witnesses were all simple folks and gave simple, flawless narration of the murder. None of them, especially the sexton, have been shown to have sufficient reason to lie. On the question of exonerating circumstances, there was no angle in

the case from which the killing could be justified, excused, or the penalty mitigated. On the contrary, in perpetrating unnecessary cruelty, burying the deceased alive, the accused forfeited all claims to sympathy and leniency and made himself deserving of the severest punishment.

I reiterate what I said in my dissenting opinion in *G. R. No. L-1278, Barrioquinto et al., vs. Fernandez et al.*:

"Amnesty presupposes the commission of a crime. When an accused says that he has not committed a crime he cannot have any use for amnesty. It is also self-evident that where the amnesty proclamation imposes certain conditions, as in this case, it is incumbent upon the accused to prove the existence of those conditions. A petition for amnesty is in the nature of a plea of confession and avoidance. The pleader has to confess the allegations against him before he is allowed to set out such facts as, if true, would defeat the action. It is a rank inconsistency for one to justify an act, or seek forgiveness for an act of which, according to him, he is not responsible. It is impossible for a court or commission to verify the presence of the essential conditions which should entitle the applicants to exemption from punishment, when the accused and his witnesses say that he did not commit a crime. In the nature of things, only the accused and his witnesses could prove that the victim collaborated with the enemy; that the killing was perpetrated in furtherance of the resistance movements; that no personal motive intervened in the commission of the murder, etc., etc. These, or some of these, are matters of belief and intention which only the accused and his witnesses could explain."

Murders, rapes and other common crimes committed by guerrillas, even though in furtherance of the resistance movement, are not proper subject of an amnesty and the amnesty proclamation covering these offenses must be regarded in the nature of a pardon. (*Villa vs. Allen*, 2 Phil., 436.)

"This brings us to the differences between legislative immunity and a pardon. They are substantial. The latter carries an imputation of guilt; acceptance a confession of it. The former has no such imputation or confession. It is tantamount to the silence of the witness. It is noncommittal. It is the unobtrusive act of the law given protection against a sinister use of his testimony, *not like a pardon, requiring him to confess his guilt in order to avoid a conviction of it.*" (*Burdick vs. United States*, 236 U. S., 79; 59 L. ed., 476, 482.)

"At the English common law, where the pardon is obtained before issue joined, it must be pleaded as other matters in confession and avoidance, under the particular jurisdiction." (*Villa vs. Allen*, *supra*.)

Judgment reversed.

[No. L-1547. January 28, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
MAXIMO BATE (*alias* BORJA, *alias* PATSO), defendant
and appellant.

1. CRIMINAL LAW; TREASON; OVERT ACTS; ALWAYS BEARING ARM AND IN COMPANY OF ENEMY'S FORCE, AIDING AND TAKING IMPORTANT PART IN RAIDING PARTIES CONSTITUTED ACCUSED'S

TREASONABLE ACTS.—By the testimonies of at least two witnesses, it has been fully established that appellant was always seen armed and in the company of Filipino undercover men who allied themselves with their superiors—the Japanese soldiers and military police. He was seen always accompanying and aiding these raiding parties and took into an important part in them questioning the people found during the raids, apprehending them, tying them up, even threatening and torturing them in an effort to obtain the information desired. Furthermore there is no reason known why the witness for the prosecution should falsely accuse him of these grave charges.

2. ID.; ID.; OVERT ACTS TESTIFIED TO BY ONLY ONE WITNESS.—Facts established by testimony of only one witness, although not sufficient to prove overt acts of which the appellant is accused, nevertheless, the evidence may be considered as proof of his adherence to the enemy.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

P. J. Sevilla for appellant.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Jaime de los Angeles* for appellee.

MONTEMAYOR, J.:

The appellant Maximo Bate *alias* Borja *alias* Patso was charged with treason before the People's Court, on nine counts. In the course of the trial, the Special Prosecutor informed the court that he was dropping counts 3, 6, and 8 of the amended information. After trial, the People's Court (Fifth Division) found the defendant guilty of counts 1, 2, 4, 5, 7, and 9, stating that it entertained no doubt as to the guilt of the accused; that the overt acts alleged in the information on said counts had been fully substantiated by the witnesses for the prosecution, and that there was nothing in the record to show why their testimonies should not be given full credit. He was sentenced to suffer life imprisonment with all the accessories of the law and to pay a fine of ₱10,000, plus costs. He is appealing from that decision.

At the beginning of the trial the appellant admitted in open court that he was and had always been a Filipino citizen. For the sake of clearness we shall take up the different counts and the facts alleged under them in chronological order.

Under count 7, it has been duly proven that on October 8, 1943, while the deceased Bernardo Laborete and his companions, many of whom were guerrillas were in or around the store of Maxima de Java at Tisa Market, Cebu City, a truckload of undercover men, among them the appellant Maximo Bate, then armed, and some Japanese soldiers arrived. The companions of Laborete ran away, but he, because of his sore foot could not escape. The Japanese soldiers and their companions started shooting and hit La-

borete on the shoulder, as a result of which, he fell down. Later on, one of the raiders finding him on the ground wounded, shot him in the head, killing him. The identity of the person who wounded Laborete on the shoulder and the one who later shot him in the head has not been established. But it is a fact that after the shooting, and while the Japanese soldiers were investigating, the appellant posted himself on the road as a guard on the look-out for snipers.

Under count 1, it has been proven that on October 13, 1943, while Alfonso de la Cerna, Ariston Sevilla, and Genaro Tabares were in a store in Punta Princesa Market in Cebu City, a patrol composed of Japanese soldiers and armed Filipino undercover men, among whom was the appellant, raided said store and the three men were apprehended, accused, and maltreated on the spot and were later tied up and taken to the Headquarters of the Japanese Military Police in the Normal School where they received further punishment. They were kept in said building as prisoners up to October 27, 1943 when they were transferred to Guindolman, Bohol where they were made to work, and were not released until three months after. In that raid at the store at Punta Princesa Market, the appellant played an important role by pointing his rifle at Tabares and telling his fellow raiders to take the three men (meaning Tabares and his companions) to the Japanese Military Police Headquarters.

Under count 9, the evidence shows that on December 3, 1944, the appellant Maximo Bate, Pablo Labra, Francisco Concepcion and two Japanese soldiers raided the house of Clemente Chica and questioned him on his alleged guerrilla activities. Concepcion had previously informed the Japanese that Chica had received a letter from the guerrillas in the mountains. At first, Chica denied any connection with said guerrillas but appellant and his companions advised and pressed him to admit said connection. Chica was taken to the Japanese Military Police Headquarters at the Normal School Building where he apparently made some admissions, including his possession of a revolver, because the following day he was taken back to his house by the Japanese who recovered his revolver from a coffin where he had kept it.

Under count 2, it was equally proven that on January 5, 1945, at dawn, a group of Filipino spies including the appellant and some Japanese soldiers raided the house of the Singson family in Pardo, Cebu City. Besides the members of the family who were the two sisters Felipa Singson and Susana Singson and their brother Hospicio Singson, there were many Filipino evacuees in the house. Three of these were immediately apprehended and tied up and when one, named Ben Abellaneda of the raiding group

pointed to Hospicio Singson, the appellant immediately tied him too and began to maltreat him by choking and punching him. After some investigation, the three evacuees were released but Hospicio was taken to the Military Police Headquarters and was never seen nor heard of afterwards.

Under count 4, the evidence reveals that on January 12, 1945, while Francisca Bacalla and Pascuala Bacalla were riding in a horse-drawn vehicle on Tres de Abril Street, Cebu City, the appellant who was then armed and who was accompanied by several undercover men arrested Francisca Bacalla and took her to Sgt. Yoshida, chief of the Japanese Military Police, where she was investigated and maltreated. She was suspended in the air, stripped of all her clothes, while she was being investigated and questioned, specially by the appellant. During said investigation she evidently made some admissions about the connections of certain people in Cebu with the guerrillas, as may be gathered from the facts in count 5.

Under count 5, the following day or rather on January 13, 1945, at two o'clock in the morning the appellant accompanied by Francisca Bacalla, some Japanese soldiers and Filipino undercover men raided the house of Rosario Bacani and Anita Bacani in Bulacao, Cebu. Rosario and Anita who were suspected as guerrilla operatives and which they really were, were questioned and maltreated in an effort to make them admit their guerrilla connections. They were suspended in the air with their hands tied behind their backs. In the course of the investigation, the appellant suggested to Sgt. Yoshida who was then with the raiding party that they pour gasoline in the house and set it on fire, but his suggestion was not followed. That same morning the two sisters Rosario and Anita and their brother, all tied and secured with the same rope were taken to the house of Doctor Colegado, then being used as a Japanese garrison where they were confined and kept prisoners, Rosario for 20 days, Anita for 14 days and their brother for 4 days.

In his defense, the appellant claims that he joined the guerrilla movement in September, 1942 but the following year he was arrested and imprisoned by the Japanese for his guerrilla connections and between September, 1943 and February, 1944, while under Japanese custody, he was assigned to work in the kitchen of two Japanese Military Police and in September, 1944 he escaped and went to Leyte. In September, 1944 he was again captured and charged with killing one, Francisco Catil; that from November, 1944 up to the arrival of the American forces he was assigned to work in the house of Sgt. Yoshida of the Japanese Military Police as a trusted prisoner. He further stated that he had no connection with nor was he present in the several raids attributed to him under the several counts already mentioned, except in the raid made at Punta

Princesa Market on October 13, 1943 under count 1, where he says that he was taken there by the Japanese only to identify the killer of one Amang Dempsey. However, in connection with this claim of appellant and as was well observed by the Solicitor General, if the purpose of the raid was to find out who killed Amang Dempsey, then the Japanese in that raiding party should have questioned the three men they had apprehended, namely: De la Cerna, Sevilla and Tabares about the death of Dempsey as well as of his killer, but no such questions were asked and the raiding party merely questioned these men as to their guerrilla connections and activities.

To corroborate the appellant in his claim that he was not present in the raid in the store of Maxima de Java under count 7, he presented Arcadio Mondejar who told the court that he was one of the men in the truck which arrived in front of De Java's store, but that it was not a raiding party but only a shipment of rice of the NARIC; that the appellant was not present at the time; that what really happened was that Bernardo Laborete who was then armed with a revolver, tried to hold up the truck and that the Constabulary soldiers who were in the truck as guards shot him.

Even with this attempted corroboration we are not inclined to accept this theory of the appellant. In the first place, the witness Arcadio Mondejar was, like the appellant, a treason indictee and confined in the same jail with him. And besides being good friends, they evidently realized that they were in the same predicament and decided to help each other out. If the truck really contained only rice for distribution, there was no reason why it should be held up by Laborete especially, if as claimed by Mondejar, there were several armed Constabulary soldiers guarding it. It is more reasonable to believe the prosecution that it was really a raiding party composed of Japanese soldiers and Filipino spies, one of them being the appellant, which succeeded in dispersing the guerrillas found in and around the store and killing one of them.

In connection with all these counts found proven against the appellant by the People's Court, it may be remembered that during the period covered by these counts the appellant was always seen armed and in the company of Filipino undercover men who allied themselves with their superiors—the Japanese soldiers and Military Police. The appellant was seen always accompanying and aiding these raiding parties and took quite an important part in them, questioning the people found during the raids, apprehending them, tying them up, even threatening and torturing them in an effort to obtain the information desired. Furthermore, there is no reason known why the witness for the prosecution should falsely accuse the appellant of these grave charges.

All the charges under the five counts 1, 2, 5, 7, and 9 have been established by the testimonies of at least two witnesses. As regards count 4, as pointed out by the Solicitor General, only one witness Felisa Taboado testified as to Francisca Bacalla's arrest by the appellant and only one witness, Conrado Bao, the cook of Sgt. Yoshida testified about her investigation at Yoshida's house by the defendant; but although not sufficient to prove the overt acts of which he is accused, nevertheless, the evidence may be considered as proof of his adherence to the enemy.

In conclusion, we find that the guilt of the appellant has been established beyond reasonable doubt and finding the decision appealed from in accordance with law and supported by evidence, the same is hereby affirmed, with costs against the appellant.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, and Tuason, JJ., concur.

PERFECTO, J., concurring and dissenting:

We concur in the decision affirming the judgment of the People's Court. The evidence on record has proved beyond all reasonable doubt overt acts of treason committed by appellant.

We cannot agree, however, with the pronouncement as regards count 4 of the information upon which only one witness, Felisa Taboado, testified as to Francisca Bacalla's arrest, and only one witness, Conrado Bao, testified as to Bacalla's investigation by appellant at Yoshida's house, wherein it is said that the uncorroborated testimony of each of said witnesses can be considered as proof of the defendant's adherence to the enemy. We are of opinion that to prove any element of the crime of treason that constitutes an overt act or upon which the same is based, it is indispensable that the two-witness rule be strictly adhered to. Article 114 of the Revised Penal Code does not distinguish, for purposes of the two-witness rule, between overt acts of aid and comfort and overt acts of adherence.

Judgment affirmed.

[No. L-1653. January 28, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, vs.
VICENTE TUMANDAO, defendant and appellant

1. CRIMINAL LAW; TREASON; INTENTION IS DETERMINED BY COMMON EXPERIENCE AND OBSERVATION OF MANKIND.—It is hard to believe that the appellant, who had rendered splendid service in Bataan, and fresh from the risks and hardships that were his in Capas, would readily, much less voluntarily, have allowed himself to become a willing tool of his former war enemies. It is a matter of public notoriety that the Filipino soldiers released in Capas endeavored to enter in the government service

in any capacity with a view solely to escaping the possibility of being drafted into the Japanese army or being suspected as hostile to the military occupants.

2. ID.; ID.; EVIDENCE; ADMISSION AND AVOIDANCE.—We are impressed by the frankness of the appellant in admitting his participation in the raids alleged in the information, an admission which forces us to accept his explanation as to the nature and extent of such participation. The fact that all of those arrested on the occasions in question were released immediately two or three days after he made his investigations is persuasive enough to show that the appellant had undoubtedly not intended to betray his country and fellow citizens. As there is also no showing that the appellant had previous knowledge of the guerrilla connection of those whose relatives were arrested and detained it is not safe to assume that the raids charged in the information were made at his initiative or instigation. We rather think that appellant's role in the incidents complained of served to frustrate the barbarous ways of the Japanese if the latter were allowed to run the whole show.

3. ID.; ID.; APPELLANT'S FAILURE TO JOIN THE GUERRILLAS.—“Those who refused to cooperate, in the face of danger, were patriotic citizens; but it does not follow that the faintheart, who gave in, were traitors.” (*People vs. Godinez*, L-895, December 31, 1947, 45 Off. Gaz., 2524.)

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Lastrilla & Alidio for appellant.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Felix V. Makasiar* for appellee.

PARÁS, J.:

This is an appeal from a judgment of the People's Court convicting the appellant of treason and sentencing him to *reclusión perpetua* and to pay a fine of two thousand pesos, plus the costs.

The information imputed to the appellant eighteen counts, but the People's Court found him guilty of only five charges, namely:

“1. The herein accused, with intent to give aid and comfort to the enemy, sometime in the year 1943, wilfully and treasonably accepted the position of second in command of the 3d Leyte Company at Dulag, Leyte, Philippines, within the jurisdiction of this Honorable Court, of the Japanese-sponsored Bureau of Constabulary, and discharged the duties of the said office until the Americans returned.

“12. The herein accused, with intent to give aid and comfort to the enemy, sometime on or about the 18th of January, 1944, wilfully and reasonably led a patrol to sitio Masonting, Malitbog, Leyte, Philippines, to arrest Simplicio Ajero *alias* Dodong, an ex-USAFFE soldier, and on which occasion Dodong Ajero being away, and said accused took and carried away, with intent of gain, jewels, such as earrings, medal, and shoes, polo shirts and trousers belonging to the family, and likewise brought the mother and younger brother of Dodong Ajero to the municipal jail for investigation and held them as prisoners.

"13. The herein accused, with intent to give aid and comfort to the enemy, sometime on or about January 19, 1944, wilfully and treasonably led a patrol of soldiers to Concepcion, Dulag, Leyte, Philippines, in order to arrest men suspected as guerrillas, and on which occasion eight men were arrested and brought to the military police headquarters for investigation.

"14. The herein accused, with intent to give aid and comfort to the enemy, sometime on or about January 22, 1944, wilfully and treasonably led a patrol to Concepcion, Malitbog, Leyte, Philippines, within the jurisdiction of this Honorable Court, to arrest Jose Lastima, another USAFFE soldier, and whose mother and brother were also taken to the MP headquarters for investigation when the said Lastima was not found in his house.

15. The herein accused, with intent to give aid and comfort to the enemy, on or about January 22, 1944, wilfully and treasonably led a patrol of Japanese military police and Constabulary soldiers to a barrio in Malitbog, Leyte, Philippines, in order to arrest Jose Lastima whom they failed to arrest on a previous occasion, and on which occasion Jose Lastima being away still at the time, the whole family of Jose Lastima was taken and kept as hostages in the Japanese military garrison."

With regard to count 12, the appellant testified that he and five of his Constabulary men went with fifteen Japanese soldiers and two Japanese interpreters, led by a spy named Lucas, to the barrio of Masonting, Malitbog, Leyte, wherein the appellant was ordered by the Japanese to have his men surround the house of Melania Ajero; that the Japanese officer and an interpreter went up the house; that he neither broke any trunk and took away therefrom jewelries and clothes nor arrested Melania Ajero and her son Rodrigo Anduyo; that the latter were arrested and detained by the Japanese; that upon order of the Japanese, the appellant investigated Melania and Rodrigo Anduyo. Appellant's testimony was corroborated in the main by Domingo Cruz and Bibiano Daga.

As to count 13, the appellant, corroborated in the main by Domingo Cruz and Bibiano Daga, testified that the raid made on January 19, 1944, in barrio Concepcion, Malitbog, Leyte, was not led by him but by a Japanese; that he and his Constabulary men went with the Japanese without knowing the latter's purpose, although the appellant took charge of his men so that they would not commit any abuse; that he asked his men to surround the house of Anastacio de la Cruz upon order of the Japanese who, likewise, were the ones who arrested and jailed eight persons.

As to count 14, the appellant testified that on January 22, 1944, he was ordered by the Japanese to go with their patrol and to surround the house of Andrea Penisilda in barrio Binit I, from which the Japanese took Andrea and her son Hermogenes Lastima; that he neither hit Andrea on the eyes nor went up her house and took her money from her trunk; that he did not suspend Hermogenes in mid-air; that on the following day, he investigated Her-

mogenes as to the whereabouts of his brother Jose, as ordered by the Japanese; that he told the Japanese that Hermogenes had not seen his brother for a long time and had nothing to do with his case, so that the Japanese released Hermogenes; that his men delivered food to Andrea and Hermogenes secretly; that he did not maltreat them. Domingo Cruz corroborated substantially appellant's testimony.

The attorneys for the appellant argue that only one witness was presented to prove the charge in count 15; and the prosecution admits this, with the qualification, however, that "while the *arrest* of Leona Cadayuna and her father by appellant has been proven by only one witness—Leona Cadayuna herself—because her father died long before the trial (p. 8, t. s. n.), their incarceration and investigation by appellant has been demonstrated by the testimonies of Leona, Andrea Penisilda and Hermogenes Lastima (pp. 6, 15, 19, 20, t. s. n.)."

We have weighed carefully the evidence for both sides and have come to the conclusion that the appellant has not been proved guilty of treason beyond a reasonable doubt. At the outset, we have the uncontroverted facts that the appellant was an officer of the Philippine Army even before the outbreak of the war in 1941, and he was one of those who made a last stand in Bataan, and for his splendid services he was decorated with a Purple Heart medal; that after the surrender, he was a participant in the "Death March"; that he was one of those imprisoned in the Capas Concentration Camp; that he was never officially released as a prisoner of war, since, after his concentration in Capas, he was made by the Japanese to undergo training in the Constabulary barracks in Gagalangin, Tondo, Manila, after which he was sent to the Constabulary unit in Leyte; that there were many Japanese soldiers in his station.

It is hard to believe that the appellant, who had rendered splendid service in Bataan, and fresh from the risks and hardships that were his in Capas, would readily, much less voluntarily, have allowed himself to become a willing tool of his former war enemies. Upon the other hand, we are inclined to think that he had no choice in the matter. Indeed, we know as a matter of public notoriety that the Filipino soldiers released in Capas endeavored to enter in the government service in any capacity with a view solely to escaping the possibility of being drafted into the Japanese army or being suspected as hostile to the military occupants. In this case there is of course no proof that the Bureau of Constabulary during the Japanese occupation either was a part of the Japanese army or even participated in military operations of the Japanese.

We are impressed by the frankness of the appellant in admitting his participation in the raids alleged in the information, an admission which forces us to accept his explanation as to the nature and extent of such participation. The fact that all of those arrested on the occasions in question were released immediately two or three days after he made his investigations is persuasive enough to show that the appellant had undoubtedly not intended to betray his country and fellow citizens. As there is also no showing that the appellant had previous knowledge of the guerrilla connection of those whose relatives were arrested and detained, it is not safe to assume that the raids charged in the information were made at his initiative or instigation. We rather think that appellant's role in the incidents complained of served to frustrate the barbarous ways of the Japanese if the latter were allowed to run the whole show.

The prosecution directs attention to the fact that, as proof of appellant's treasonable intent, he did not join the guerrillas notwithstanding the circumstance that he had a chance to do so. Aside from the testimony of the appellant that the leader of the guerrilla band (Lt. Bautista) instructed him and some of his men to return to town—after the appellant had expressed his desire to remain with said band on one occasion—we may state that, as well observed by Mr. Justice Bengzon, in *People vs. Godinez*, L-895, December 31, 1947, 45 Off. Gaz., 2524 “those who refused to cooperate, in the face of danger, were patriotic citizens; but it does not follow that the faint-heart, who gave in, were traitors.”

In the view thus taken of the case, it becomes unnecessary to pass upon the contention of counsel for the appellant that count 15 was not proved by two witnesses and that, as to count 1, “No one of the witnesses for the prosecution, * * * declared that the appellant was second in command of the 3d Leyte Company of the Bureau of Constabulary stationed at Dulag, Leyte.”

The judgment appealed from is therefore reversed and the appellant acquitted, with costs *de oficio*. So ordered.

Moran, C. J., Feria, Bengzon, Briones, and Montemayor, JJ., concur.

Perfecto, J., concurs in the result.

PABLO, M., disidente:

Disiento. En mi opinión, el acusado es culpable del delito de traición.

En cuanto al cargo No. 12, está probado que en Enero 18 de 1944, el acusado y varios soldados japoneses, todos armados, fueron a la casa de Melania Ajero, madre de Dodong, conocido guerrilla bajo el mando de Miranda. Al encontrar algunas camisas en el registro, el acusado ex-

clamó: "Estas camisas son de Dodong Ajero." Y se apoderó de 5 pantalones, 6 camisas, 2 aretes y una gargantilla. Después de investigar a la pobre madre de Dodong y porque no había obtenido de ella contestación satisfactoria, la llevó con sus compañeros japoneses al pueblo en donde estuvo arrestada por cinco días en el cuartel del Kempei Tai. Durante ese tiempo el acusado iba siempre uniformado como teniente de la constabularia. Porfiria, Fortunato y Rodrigo, hermanos de Dodong, fueron también investigados. Pero por no se sabe qué razones, el acusado dejó libres a Porfiria y Fortunato, y arrestó a Rodrigo juntamente con su madre Melania. Creyendo tal vez que Rodrigo podría ayudar en la campaña de pacificación, le dió libertad después de estar arrestado por tres días con la condición de que buscara a su hermano Moisés que también era guerrillero. A los tres días, Rodrigo volvió al cuartel para dar cuenta de que no le encontró. El acusado le soltó otra vez con instrucciones de buscarle.

Si el acusado ejecutó los actos relatados solamente para contentar a sus "amos," por qué dió libertad a Rodrigo con instrucciones de buscar a Moisés y traerle al cuartel? No es ello una demostración clara del deseo vehemente del acusado de arrestar a toda costa a los guerrilleros, para inutilizar la guerra de guerrillas que estaban sosteniendo los filipinos, en protesta contra el régimen japonés? Podía haber dicho que no podía obtener información de Rodrigo y soltarle como soltó a la madre, sin condición alguna. La liberación de Rodrigo con la condición de buscar a su hermano Moisés y traerle al cuartel revela a la legua la intención del acusado: aniquilar a las guerrillas. Y es evidente que suprimida la guerrilla, quedaba anulada la guerra de resistencia.

Cuanto al cargo No. 13. El 19 de Enero de 1944, el acusado y varios soldados japoneses acorralaron la casa de Atanacio de la Cruz a quien se le tenía por guerrillero. Después de ordenar que se pongan en fila las personas que estaban presentes en el lugar porque entonces se estaba sacrificando un cerdo, el acusado y algunos japoneses requisaron la casa. Por haber encontrado una cadena de balas, De la Cruz fué llevado escaleras abajo y maltratado. Mientras los japoneses le tenían sujetado a De la Cruz por la camisa, el acusado le pegó con una penca de coco. Preguntados los siete individuos en fila, Desiderio Cahayag, Marcelo Cahayag, Andrés Ocsabo, Tomás Dupao, Cirilo Dupao, Lorenzo Capalaran y otra persona desconocida, si eran guerrilleros, Desiderio Cahayag contestó que no. Porque no estuviese satisfecho el acusado de la contestación, les ató a todos por las manos para ser llevados al cuartel del Kempei Tai en Malitbog. El acusado preguntó a Desiderio sobre el paradero del teniente Francisco, y como dijera que no sabía, le preguntó por su rango, y

Desiderio contestó que era teniente; acto seguido el acusado le dió un puñetazo en el abdomen diciendo: "No es verdad que ya es comandante?" El acusado también preguntó a Andrés Ocsabo sobre el paradero del comandante Francisco, y como dijese que no sabía, el acusado le empujó con tal fuerza que su cabeza se pegó contra la barandilla de la casa. Todos estos siete individuos fueron encerrados en los bajos del cuartel por cinco días sin darles comida por tres días. No demuestra este procedimiento el deseo manifiesto de sembrar el pánico en la población civil y hacer que todos huyan de las guerrillas? No es éso un medio de aniquilar a las guerrillas?

En cuanto a los cargos Nos. 14 y 15, está también probado que en Enero 22, 1944, el acusado y sus cinco compañeros japoneses, todos armados, arrestaron a Hermógenes Lástima en la playa del barrio del Binit I, a dos kilómetros del pueblo de Malitbog, Leyte, por ser hermano de José Lástima, un conocido guerrillero. El acusado fué el que encabezaba el grupo. Preguntó a Hermógenes por el paradero de su hermano José y como contestase que no sabía le ató las dos manos por la espalda, dejándole plantado en frente de su casa. El acusado y sus compañeros subieron en los altos y el acusado preguntó bajo amenaza a Andrea Penisilda, dónde estaba su hijo, y ella contestó que no sabía. El acusado con un hacha abrió el baúl de una hija de aquélla, en el cual sustrajo alhajas avaluadas en P200 y P150. Andrea y Hermógenes fueron llevados a Malitbog. Mientras iban andando el acusado pegó a Andrea con un mecate acertándole en el ojo derecho porque, a una pregunta, ella contestó que no sabía dónde estaba su hijo. Cuando estaban en el cuartel de los japoneses en Malitbog, Hermógenes fué preguntado dónde estaba su hermano y porque contestó que no sabía, el acusado le abofeteó en ambas mejillas y le pegó en la cabeza. Después de maltratarle, le colgó dejándole pendiente en el aire por 20 minutos y después le llevó con la cara ensangrentada al calabozo en donde estaba detenida su madre. Ambos fueron puestos en libertad después de 3 días de sufrimiento, de ansiedad, y de temor. En todo el día de la investigación, a Hermógenes y a su madre no se les dió alimento alguno.

Por la mañana del 22 de Enero de 1944, el acusado, armado con revólver, acompañado por varios soldados japoneses con rifles, fué a la casa de Leona Cadayuna preguntando por el paradero de su esposo José Lástima, que era guerrillero. Porque contestó que no sabía, la amenazó con castigarla si no lo revelase. Ella contestó que no podía decírselo porque en realidad no sabía dónde estaba. Le arrestaron a ella con su padre Ciriaco Cadayuna, llevándoles al cuartel del Kempei Tai en Malitbog. Después de estar detenidos en los bajos del cuartel, Leona

fué puesta en libertad porque su suegro Ciriaco Cadayuna se presentó como fiador.

Si el acusado aparentaba ayudar solamente a los soldados invasores, qué necesidad tenía de maltratar a los que no podían darle los informes que deseaba obtener, qué necesidad tenía de pegar con un mecate a una pobre mujer por la simple falta de no saber dónde estaba su hijo, qué necesidad tenía de arrestar y detener a la esposa y suegro de un ausente guerrillero? Cabe duda aun de que el propósito del acusado fué sembrar el terror en todas partes para infundir miedo a los pobres ciudadanos en tener comunicación con las guerrillas?

En mi opinión, los hechos probados demuestran la ayuda incondicional del acusado a la campaña de exterminio de guerrillas llevada a cabo por el ejército invasor japonés.

Voto por que se confirme la condena.

TUASON, J., dissenting:

I regret to have to disagree with the majority.

We do not only have to give weight to the findings of fact of three experienced judges who heard the witnesses testify, but the records conclusively refute the idea that the appellant "had no choice in the matter."

That the accused admitted going with Japanese, I do not consider as frankness; it was a fact he could not have very well denied, and the admission would not do any harm. He did deny the motive and the nature of his participation which was the incriminating feature of the evidence against him.

These witnesses who, as the court below observed, had no reason to perjure against the defendant, adduced the following evidence:

Count 12. Melania Ajero testified that on January 18, 1944, the accused, armed with a pistol, and in company with Japanese soldiers, came to her house looking for Dodong, the witness's son who was a guerrilla. The Japanese brought the people of the house down while the *accused* searched the place for firearms and ammunition. He broke open Melania's trunk, pointed to some shirts as belonging to Dodong Ajero, and picked five pairs of trousers, six shirts, two earrings and a locket. He also questioned Porfiria, Fortunato and Rodrigo about their brother Dodong Ajero. Afterward Andrea and Rodrigo were brought to town where they were again questioned and imprisoned in the garrison for 5 days.

Count 13. Desiderio Cahayag and Andres Ocsabo testified that on January 19, 1944, at Malitbog, Leyte, the accused with Japanese soldiers appeared at barrio Concepcion, Malitbog, when he was butchering a pig near Atanacio de la Cruz's house. There were about seven persons who had come to buy pork. The accused and his

Japanese companions surrounded De la Cruz's house and searched it, having found a chain made of bullets inside a trunk. They brought De la Cruz down and maltreated him. He was held by two Japanese soldiers by the shirt and beaten *by the defendant* with the stem of a coconut leaf. The *accused* ordered the persons around to line up and asked them if they were guerrillas. When Cahayag told him that they were not guerrillas, *he* tied the hands of those men and took them to town. In the school building which was being used as the garrison of Kempei Tai the *accused* questioned Cahayag and Ocsabo regarding Lt. Francisco's whereabouts and Lt. Francisco's rank in the guerrilla force. In the course of the investigation, Desiderio was struck on the abdomen and Ocsabo's head was bumped against the railings of the school building. They were kept in the garrison for five days.

Counts 14 and 15. Hermogenes Lastima, his mother Andrea Penisilda, and Leona Cadayuna testified that around 6 in the morning of January 22, 1944, Tumandao in company with five Japanese and one constabulary soldier, all armed, arrested Hermogenes on the seashore because he was the brother of Jose Lastima, a guerrilla soldier. The *accused* was armed with a revolver and was the *leader of the group*. *He* questioned Hermogenes regarding the whereabouts of his brother, and when Hermogenes said that he did not know, the *accused* tied his hands behind his back and brought him in front of the house. Then the *accused* followed by the Japanese soldiers went up the house, threatened Andrea Penisilda, and tore open a trunk with an ax. Jewels worth P200 and P150 cash were taken away by *him*. Andrea and her son Hermogenes were taken to Malitbog. On the way, *Andrea was whipped with a rope and hit on the right eye by the defendant* because of her persistent refusal to tell the whereabouts of her son Jose. Arriving at 8 o'clock at Malitbog, they were detained in the school building. There they saw Leona Cadayuna and Ciriaco Cadayuna also detained. On the second floor of that building Hermogenes was again investigated by the *defendant* about the whereabouts of Jose, slapped on both cheeks, and severely beaten on the head and the shoulders. He was warned that if he did not tell the truth the Japanese would kill him on that day. There were five Japanese soldiers, but these left and the *accused* suspended Hermogenes in midair. After about 20 minutes, he was released by the *accused* and put in the prison cell with his mother. Andrea corroborated that her son was bleeding. At about 10 o'clock that same morning, the *accused* armed with a revolver and in company with Japanese soldiers armed with rifles, went to the house of Leona Cadayuna, wife of Jose Lastima, in barrio Sangahon, about three kilometers from Malitbog,

looking for Jose. Having failed to obtain from Leona the information demanded, the *defendant* took her and her father to the Kempei Tai headquarter in Malitbog whence they were transferred to the detention cell on the ground floor of the building. There they saw Hermogenes Lastima and Andrea Penisilda confined in the same cell. She saw Hermogenes with wounds in the wrists and a swollen face when he returned from the investigation conducted by the accused. Andrea Penisilda and Hermogenes were kept in prison for three days. For one day during the investigation they were not given food nor water.

If we are to believe the witnesses, as we should and as the court below did, the defendant's cooperation with the Japanese was not a simulated undertaking. His was the role of a leader, as one of the witnesses said, directing the raids and the arrests, taking charge of the investigations, and personally executing the punishments of the people investigated who could not, or refused to give the information wanted of them. The saying that patriotism is the refuge of scoundrels finds a good example in this case.

If the accused was decorated with a Purple Heart, an assertion that was put forward by defendant in his uncorroborated testimony; if he had fought in Bataan and been wounded in battle and suffered imprisonment—these did not give him privilege and freedom to oppress peaceful inhabitants to ingratiate himself to the Japanese and save his neck, supposing, for the sake of argument, that this was his motive. They rather exacted greater loyalty than was expected of a common citizen. His alleged decoration and his rank in the army imposed upon him an obligation to live up to the fine and manly qualities which were symbolized by that decoration.

The fact is, as his acts eloquently revealed, his collaboration was not a feign but wholehearted and real. His untrustworthy testimony did not prove any connection between him and the underground resistance other than that he gave the guerrillas a few rifles and a few rounds of ammunition, not even the source of which he deigned to state. Accepting his pretended contribution to the cause of "the patriots who kept the torch of liberty aflame," that contribution, and not his cooperation with the enemy, was a make-believe. Deeds speak louder than words. No amount of protestation of patriotism and lofty intention can set at naught the logical connotation of his actions and the brutality he visited upon innocent men and women in the interest of his master.

His testimony that he was in contact with certain guerrillas and that he furnished them with ammunition and rifles, if true, neither rebut the evidence of collaboration against him nor show that his collaboration with the Japanese was

a pretext. We rather believe that his alleged relation with certain guerrillas, if true, was no more than a front to be used as a defense, as he has tried to do in the present case, in the event of retribution.

The accused had no "choice," perhaps, to remain aloof, although his age, experience and physical condition fitted him to become a guerrilla, inasmuch as he himself said that at one time he had a notion to go underground. He is not being blamed for undergoing "rejuvenation" training and for joining the Constabulary after his release from the concentration camp. But he did have a free choice between sticking to his functions as conservator of the peace and order and helping the enemy in the latter's prosecution of the war, outdoing and excelling him in his brutal practices. There were thousands of his former comrades-in-arm who did not enter the service of the Japanese with complete safety to themselves and their families, and those who did not succeed in evading such service did not find it necessary, nor were they compelled to terrorize peaceful inhabitants in their hours of fear and confusions. This is recent history of which we may take judicial notice.

The majority express serious doubt that the accused could at heart have gone to the side of the enemy in the face of his past record in the Philippine and United States Armies. While the Court's ratiocination is the normal instinct of normal people, and many preferred extreme sacrifice to a betrayal of their country, we do not have to strain our memory to recall notable exceptions. And, going to another epoch, need we cite a noted and capable general in United States history for whose brilliant exploits he received the thanks of Congress but who delivered information on important military posts to the enemy and escaped to the British lines?

Judgment reversed; appellant acquitted.

[No. L-3820. July 18, 1950.]

JEAN L. ARNAULT, petitioner, *vs.* LEON NAZARENO, Sergeant-at-Arms, Philippine Senate, and EUSTAQUIO BALAGTAS, Director of Prisons, respondents.

1. CONSTITUTIONAL LAW; POWER OF EITHER HOUSE OF CONGRESS TO CONDUCT AN INQUIRY.—The power of inquiry, with process to enforce it, is an essential and appropriate auxiliary to the legislative function.
2. *Id.*; RANGE OF LEGISLATIVE INQUIRY.—The Congress of the Philippines has a wider range of legislative field than either the Congress of the United States or a State Legislature, and the field of inquiry into which it may enter is also wider. It is difficult to define any limits by which the subject matter of its inquiry can be bounded. Suffice it to say that it must be coextensive with the range of legislative power.

3. ID.; POWER OF EITHER HOUSE OF CONGRESS TO PUNISH A WITNESS FOR CONTEMPT.—No person can be punished for contumacy as a witness before either House unless his testimony is required in a matter into which that House has jurisdiction to inquire.
4. ID.; ID.—Once an inquiry is admitted or established to be within the jurisdiction of a legislative body to make, the investigating committee has the power to require a witness to answer any question pertinent to the subject of the inquiry, subject of course to his constitutional privilege against self-incrimination.
5. ID.; ID.; MATERIALITY OF THE QUESTION.—The materiality of a question that may be propounded to a witness is determined by its direct relation to the subject of the inquiry and not by its indirect relation to any proposed or possible legislation.
6. ID.; ID.; POWER OF THE COURT TO PASS UPON MATERIALITY.—Where the immateriality of the information sought by the legislative body from a witness is relied upon to contest its jurisdiction, the Court is in duty bound to pass upon the contention. Although the legislative body has the power to make the inquiry, the Court is empowered to correct a clear abuse of discretion in the exercise of that power.
7. ID.; LACK OF POWER OF THE COURT TO INTERFERE WITH LEGISLATIVE ACTION.—Since the Court has no power to determine what legislation to approve or not to approve, it cannot say that the information sought from a witness which is material to the subject of the legislative inquiry is immaterial to any proposed or possible legislation. It is not within the province of the Court to determine or imagine what legislative measures Congress may take after the completion of the Legislative investigation.
8. ID.; AUTHORITY OF EITHER HOUSE OF CONGRESS TO COMMIT A WITNESS FOR CONTEMPT BEYOND PERIOD OF LEGISLATIVE SESSION.—There is no sound reason to limit the power of the legislative body to punish for contempt to the end of every session and not to the end of the last session terminating the existence of that body. While the existence of the House of Representatives is limited to four years, that of the Senate is not so limited. The Senate is a continuing body which does not cease to exist upon the periodical dissolution of the Congress or of the House of Representatives. There is no limit as to time to the Senate's power to punish for contempt in cases where that power may constitutionally be exerted.
9. ID.; PRIVILEGE AGAINST SELF-INCRIMINATION; REFUSAL OF WITNESS TO ANSWER.—Testimony which is obviously false or evasive is equivalent to a refusal to testify and is punishable as contempt, assuming that a refusal to testify would be so punishable.
10. ID.; ID.; POWER OF COURT TO DETERMINE WHETHER QUESTION IS INCRIMINATORY.—It is not enough for the witness to say that the answer will incriminate him, as he is not the sole judge of his liability. The danger of self-incrimination must appear reasonable and real to the court, from all the circumstances, and from the whole case, as well as from his general conception of the relations of the witness. Upon the facts thus developed, it is the province of the court to determine whether a direct answer to a question may criminate or not. The witness cannot assert his privilege by reason of some fanciful excuse, for protection against an imaginary danger, or to secure immunity to a third person.

11. ID.; RIGHT AND OBLIGATION OF A CITIZEN.—It is the duty of every citizen to give frank, sincere, and truthful testimony before a competent authority. His constitutional privilege against self-incrimination, unless clearly established, must yield to that duty. When a specific right and a specific obligation conflict with each other, and one is doubtful or uncertain while the other is clear and imperative, the former must yield to the latter. The right to live is one of the most sacred that the citizen may claim, and yet the state may deprive him of it if he violates his corresponding obligation to respect the life of others.

ORIGINAL ACTION in the Supreme Court. Habeas corpus.

The facts are stated in the opinion of the court.

J. C. Orendain, Augusto Revilla, and Eduardo Arboleda for petitioner.

Solicitor General Felix Bautista Angelo, Lorenzo Sumulong, Lorenzo Tañada, and Vicente J. Francisco for respondents.

OZAETA, J.:

This is an original petition for habeas corpus to relieve the petitioner from his confinement in the New Bilibid Prison to which he has been committed by virtue of a resolution adopted by the Senate on May 15, 1950, which reads as follows:

"Whereas, Jean L. Arnault refused to reveal the name of the person to whom he gave the P440,000, as well as answer other pertinent questions related to the said amount; Now, therefore, be it

"*Resolved*, That for his refusal to reveal the name of the person to whom he gave the P440,000 Jean L. Arnault be committed to the custody of the Sergeant-at-Arms and imprisoned in the New Bilibid Prison, Muntinlupa, Rizal, until discharged by further order of the Senate or by the special committee created by Senate Resolution No. 8, such discharge to be ordered when he shall have purged the contempt by revealing to the Senate or to the said special committee the name of the person to whom he gave the P440,000, as well as answer other pertinent questions in connection therewith."

The facts that gave rise to the adoption of said resolution, insofar as pertinent here, may be briefly stated as follows:

In the latter part of October, 1949, the Philippine Government, through the Rural Progress Administration, bought two estates known as Buenavista and Tambobong for the sums of P4,500,000 and P500,000, respectively. Of the first sum, P1,000,000 was paid to Ernest H. Burt, a nonresident American, thru his attorney-in-fact in the Philippines, the Associated Estates, Inc., represented by Jean L. Arnault, for the alleged interest of the said Burt in the Buenavista Estate. The second sum of P500,000 was all paid to the same Ernest H. Burt through his other attorney-in-fact, the North Manila Development Co.,

Inc., also represented by Jean L. Arnault, for the alleged interest of the said Burt in the Tambobong Estate.

The original owner of the Buenavista Estate was the San Juan de Dios Hospital. The Philippine Government held a 25-year lease contract on said estate, with an option to purchase it for ₱3,000,000 within the same period of 25 years counted from January 1, 1939. The occupation republic of the Philippines purported to exercise that option by tendering to the owner the sum of ₱3,000,000 and, upon its rejection, by depositing it in court on June 21, 1944, together with the accrued rentals amounting to ₱324,000. Since 1939 the Government has remained in possession of the estate.

On June 29, 1946, the San Juan de Dios Hospital sold the Buenavista Estate for ₱5,000,000 to Ernest H. Burt, who made a down payment of ₱10,000 only and agreed to pay ₱500,000 within one year and the remainder in annual installments of ₱500,000 each, with the stipulation that failure on his part to make any of said payments would cause the forfeiture of his down payment of ₱10,000 and would entitle the Hospital to rescind the sale to him. Aside from the down payment of ₱10,000, Burt has made no other payment on account of the purchase price of said estate.

The original owner of the Tambobong Estate was the Philippine Trust Company. On May 14, 1946, the Philippine Trust Company sold said estate for the sum of ₱1,200,000 to Ernest H. Burt, who paid ₱10,000 down and promised to pay ₱90,000 within nine months and the balance of ₱1,100,000 in ten successive annual installments of ₱110,000 each. The nine-month period within which to pay the first instalment of ₱90,000 expired on February 14, 1947, without Burt's having paid the said or any other amount then or afterwards. On September 4, 1947, the Philippine Trust Company sold, conveyed, and delivered the Tambobong Estate to the Rural Progress Administration by an absolute deed of sale in consideration of the sum of ₱750,000. On February 5, 1948, the Rural Progress Administration made, under article 1504 of the Civil Code, a notarial demand upon Burt for the resolution and cancellation of his contract of purchase with the Philippine Trust Company due to his failure to pay the installment of ₱90,000 within the period of nine months. Subsequently the Court of First Instance of Rizal ordered the cancelation of Burt's certificate of title and the issuance of a new one in the name of the Rural Progress Administration, from which order he appealed to the Supreme Court.¹

It was in the face of the antecedents sketched in the last three preceding paragraphs that the Philippine Gov-

¹ The appeal was withdrawn on November 9, 1949.

ernment, through the Secretary of Justice as Chairman of the Board of Directors of the Rural Progress Administration and as Chairman of the Board of Directors of the Philippine National Bank, from which the money was borrowed, accomplished the purchase of the two estates in the latter part of October, 1949, as stated at the outset.

On February 27, 1950, the Senate adopted its resolution No. 8, which reads as follows:

"RESOLUTION CREATING A SPECIAL COMMITTEE TO INVESTIGATE THE BUENAVISTA AND THE TAMBObONG ESTATES DEAL.

"WHEREAS, it is reported that the Philippine Government, through the Rural Progress Administration, has bought the Buenavista and the Tambobong Estates for the aggregate sum of five million pesos;

"WHEREAS, it is reported that under the decision of the Supreme Court dated October 31, 1949, the Buenavista Estate could have been bought for three million pesos by virtue of a contract entered into between the San Juan de Dios Hospital and the Philippine Government in 1939;

"WHEREAS, it is even alleged that the Philippine Government did not have to purchase the Buenavista Estate because the occupation government had made tender of payment in the amount of three million pesos, Japanese currency, which fact is believed sufficient to vest title of ownership in the Republic of the Philippines pursuant to decisions of the Supreme Court sustaining the validity of payments made in Japanese military notes during the occupation;

"WHEREAS, it is reported that the Philippine Government did not have to pay a single centavo for the Tambobong Estate as it was already practically owned by the Philippine Government by virtue of a deed of sale from the Philippine Trust Company dated September 4, 1947, for seven hundred and fifty thousand pesos, and by virtue of the rescission of the contract through which Ernest H. Burt had an interest in the estate; Now, therefore, be it

"RESOLVED, That a Special Committee, be, as it hereby is, created, composed of five members to be appointed by the President of the Senate to investigate the Buenavista and Tambobong Estate deals. It shall be the duty of the said Committee to determine whether the said purchase was honest, valid, and proper and whether the price involved in the deal was fair and just, the parties responsible therefor, and any other facts the Committee may deem proper in the premises. Said Committee shall have the power to conduct public hearings; issue *subpœna* or *subpœna duces tecum* to compel the attendance of witnesses or the production of documents before it; and may require any official or employee of any bureau, office, branch, subdivision, agency, or instrumentality of the Government to assist or otherwise cooperate with the Special Committee in the performance of its functions and duties. Said Committee shall submit its report of findings and recommendations within two weeks from the adoption of this Resolution."

The special committee created by the above resolution called and examined various witness, among the most important of whom was the herein petitioner, Jean L. Arnault. An intriguing question which the committee sought

to resolve was that involved in the apparent unnecessary and irregularity of the Government's paying to Burt the total sum of ₱1,500,000 for his alleged interest of only ₱20,000 in the two estates, which he seemed to have forfeited anyway long before October, 1949. The committee sought to determine who were responsible for and who benefited from the transaction at the expense of the Government.

Arnault testified that two checks payable to Burt aggregating ₱1,500,000 were delivered to him on the afternoon of October 29, 1949; that on the same date he opened a new account in the name of Ernest H. Burt with the Philippine National Bank in which he deposited the two checks aggregating ₱1,500,000; and that on the same occasion he drew on said account two checks: one for ₱500,000, which he transferred to the account of the Associated Agencies, Inc., with the Philippine National Bank, and another for ₱440,000 payable to cash, which he himself cashed. It was the desire of the committee to determine the ultimate recipient of this sum of ₱440,000 that gave rise to the present case.

At first the petitioner claimed before the Committee:

"Mr. ARNAULT (reading from a note). Mr. Chairman, for questions involving the disposition of funds, I take the position that the transactions were legal, that no laws were being violated, and that all requisites had been complied with. Here also I acted in a purely functional capacity of representative. I beg to be excused from making answer which might later be used against me. I have been assured that it is my constitutional right to refuse to incriminate myself, and I am certain that the Honorable Members of this Committee, who, I understand, are lawyers, will see the justness of my position."

At a subsequent session of the committee (March 16) Senator De Vera, a member of the committee, interrogated him as follows:

"Senator DE VERA. Now these transactions, according to your own typewritten statement, were legal?

"Mr. ARNAULT. I believe so.

"Senator DE VERA. And the disposition of that fund involved, according to your own statement, did not violate any law?

"Mr. ARNAULT. I believe so.

* * * * *

"Senator DE VERA. So that if the funds were disposed of in such a manner that no laws were violated, how is it that when you were asked by the Committee to tell what steps you took to have this money delivered to Burt, you refused to answer the questions, saying that it would incriminate you?

"Mr. ARNAULT. Because it violates the rights of a citizen to privacy in his dealings with other people.

* * * * *

"Senator DE VERA. Are you afraid to state how the money was disposed of because you would be incriminated, or you would be incriminating somebody?

"Mr. ARNAULT. I am not afraid; I simply stand on my privilege to dispose of the money that has been paid to me as a result of a legal transaction without having to account for any use of it."

But when in the same session the chairman of the committee, Senator Sumulong, interrogated the petitioner, the latter testified as follows:

"The CHAIRMAN. The other check of P440,000 which you also made on October 29, 1949, is payable to cash; and upon cashing this P440,000 on October 29, 1949, what did you do with that amount?"

"Mr. ARNAULT. I turned it over to a certain person."

"The CHAIRMAN. The whole amount of P440,000?"

"Mr. ARNAULT. Yes."

"The CHAIRMAN. Who was that certain person to whom you delivered these P440,000 which you cashed on October 29, 1949?"

"Mr. ARNAULT. I don't remember the name; he was a representative of Burt."

"The CHAIRMAN. That representative of Burt to whom you delivered the P440,000 was a Filipino?"

"Mr. ARNAULT. I don't know."

"The CHAIRMAN. You do not remember the name of that representative of Burt to whom you delivered this big amount of P440,000?"

"Mr. ARNAULT. I am not sure; I do not remember the name."

"The CHAIRMAN. That certain person who represented Burt to whom you delivered this big amount on October 29, 1949, gave you a receipt for the amount?"

"Mr. ARNAULT. No."

"The CHAIRMAN. Neither did you ask for a receipt?"

"Mr. ARNAULT. I didn't ask."

"The CHAIRMAN. And why did you give that certain person, representative of Burt, this big amount of P440,000 which forms part of the P1½ million paid to Burt?"

"Mr. ARNAULT. Because I have instructions to that effect."

"The CHAIRMAN. Who gave you the instruction?"

"Mr. ARNAULT. Burt."

"The CHAIRMAN. Where is the instruction; was that in writing?"

"Mr. ARNAULT. No."

"The CHAIRMAN. By cable?"

"Mr. ARNAULT. No."

"The CHAIRMAN. In what form did you receive that instruction?"

"Mr. ARNAULT. Verbal instruction."

"The CHAIRMAN. When did you receive this verbal instruction from Burt to deliver these P440,000 to a certain person whose name you do not like to reveal?"

"Mr. ARNAULT. I have instruction to comply with the request of that person."

"The CHAIRMAN. Now, you said that instruction to you by Burt was verbal?"

"Mr. ARNAULT. Yes."

"The CHAIRMAN. When was that instruction given to you by Burt?"

"Mr. ARNAULT. Long time ago."

"The CHAIRMAN. In what year did Burt give you that verbal instruction; when Burt was still here in the Philippines?"

"Mr. ARNAULT. Yes."

"The CHAIRMAN. But at that time Burt already knew that he would receive the money?"

"Mr. ARNAULT. No."

"The CHAIRMAN. In what year was that when Burt while he was here in the Philippines gave you the verbal instruction?"

"Mr. ARNAULT. In 1946."

"The CHAIRMAN. And what has that certain person done for Burt to merit receiving these P440,000?

"Mr. ARNAULT. I absolutely do not know.

"The CHAIRMAN. You do not know?

"Mr. ARNAULT. I do not know.

"The CHAIRMAN. Burt did not tell you when he gave you the verbal instruction why that certain person should receive these P440,000?

"Mr. ARNAULT. He did not tell me.

"The CHAIRMAN. And Burt also authorized you to give this big amount to that certain person without receipt?

"Mr. ARNAULT. He told me that a certain person would represent him and where I could meet him.

"The CHAIRMAN. Did Burt know already that certain person as early as 1946?

"Mr. ARNAULT. I presume much before that.

"The CHAIRMAN. Did that certain person have any intervention in the prosecution of the two cases involving the Buenavista and Tambobong estates?

"Mr. ARNAULT. Not that I know of.

"The CHAIRMAN. Did that certain person have anything to do with the negotiation for the settlement of the two cases?

"Mr. ARNAULT. Not that I know of.

"The CHAIRMAN. Is that certain person related to any high government official?

"Mr. ARNAULT. No, I do not know.

"The CHAIRMAN. Why can you not tell us the name of that certain person?

"Mr. ARNAULT. Because I am not sure of his name; I cannot remember the name.

"The CHAIRMAN. When you gave that certain person that P440,000 on October 29, 1949, you knew already that person?

"Mr. ARNAULT. Yes, I have seen him several times.

"The CHAIRMAN. And the name of that certain person is a Filipino name?

"Mr. ARNAULT. I would say Spanish name.

"The CHAIRMAN. And how about his Christian name; is it also a Spanish name?

"Mr. ARNAULT. I am not sure; I think the initial is J.

"The CHAIRMAN. Did he have a middle name?

"Mr. ARNAULT. I never knew it.

"The CHAIRMAN. And how about his family name which according to your recollection is Spanish; can you remember the first letter with which that family name begins?

"Mr. ARNAULT. S, D or F.

"The CHAIRMAN. And what was the last letter of the family name?

"Mr. ARNAULT. I do not know.

"The CHAIRMAN. Have you seen that person again after you have delivered this P440,000?

"Mr. ARNAULT. Yes.

"The CHAIRMAN. Several times?

"Mr. ARNAULT. Two or three times.

"The CHAIRMAN. When was the last time that you saw that certain person?

"Mr. ARNAULT. Sometime in December.

"The CHAIRMAN. Here in Manila?

"Mr. ARNAULT. Yes.

"The CHAIRMAN. And in spite of the fact that you met that person two or three times you never were able to find out what was his name?

"Mr. ARNAULT. If I knew, I would [have] taken it down. Mr. Peralta knows my name; of course, we have not done business. Lots of people in Manila know me, but they don't know my name, and I don't know them. They say I am 'chiflado' because I don't know their names.

"The CHAIRMAN. That certain person is a male or a female?

"Mr. ARNAULT. He is a male.

"The CHAIRMAN. You are sure that he is a male at least?

"Mr. ARNAULT. Yes.

"The CHAIRMAN. How old was he?

"Mr. ARNAULT. Let us say 38 to 40 years, more or less.

"The CHAIRMAN. Can you give us, more or less, a description of that certain person? What is his complexion: light, dark, or light brown?

"Mr. ARNAULT. He is like the gentleman there (pointing to Sen. Cabili), but smaller. He walks very straight, with military bearing.

"The CHAIRMAN. Do you know the residence of that certain person to whom you gave the P440,000?

"Mr. ARNAULT. No.

"The CHAIRMAN. During these frequent times that you met that certain person, you never came to know his residence?

"Mr. ARNAULT. No, because he was coming to the office.

"The CHAIRMAN. How tall is that certain person?

"Mr. ARNAULT. Between 5-2 and 5-6."

On May 15, 1950, the petitioner was haled before the bar of the Senate, which approved and read to him the following resolution:

"Be it resolved by the Senate of the Philippines in Session assembled:

"That Jean L. Arnault, now at the bar of the Senate, be arraigned for contempt consisting of contumacious acts committed by him during the investigation conducted by the Special Committee created by Senate Resolution No. 8 to probe the Tambobong and Buenavista estates deal of October 21, 1949, and that the President of the Senate propound to him the following interrogatories:

"1. What excuse have you for persistently refusing to reveal the name of the person to whom you gave the P440,000 on October 29, 1949, a person whose name it is impossible for you not to remember not only because of the big amount of money you gave to him without receipt, but also because by your own statements you knew him as early as 1946 when General Ernest H. Burt was still in the Philippines, you made two other deliveries of money to him without receipt, and the last time you saw him was in December 1949?"

Thereupon petitioner's attorney, Mr. Orendain, submitted for him a written answer alleging that the questions were incriminatory in nature and begging leave to be allowed to stand on his constitutional right not to be compelled to be a witness against himself. Not satisfied with that written answer Senator Sumulong, over the objection of counsel for the petitioner, propounded to the latter the following question:

"Sen. SUMULONG. During the investigation, when the Committee asked you for the name of that person to whom you gave the P440,000, you said that you can [could] not remember his name. That was your reason then for refusing to reveal the name of the

person. Now, in the answer that you have just cited, you are refusing to reveal the name of that person to whom you gave the P440,000 on the ground that your answer will be self-incriminating. Now, do I understand from you that you are abandoning your former claim that you cannot remember the name of that person, and that your reason now for your refusal to reveal the name of that person is that your answer might be self-incriminating? In other words, the question is this: What is your real reason for refusing to reveal the name of that person to whom you gave the P440,000: that you do not remember his name or that your answer would be self-incriminating?

* * * * *

"Mr. ORENDAIN. Mr. President, we are begging for the rules of procedure that the accused should not be required to testify unless he so desires.

"The PRESIDENT. It is the duty of the respondent to answer the question. The question is very clear. It does not incriminate him.

* * * * *

"Mr. ARNAULT. I stand by every statement that I have made before the Senate Committee on the first, second, and third hearings to which I was made to testify. I stand by the statements that I have made in my letter to this Senate of May 2, 1950, in which I gave all the reasons that were in my powers to give, as requested. I cannot change anything in those statements that I made because they represent the best that I can do, to the best of my ability.

"The PRESIDENT. You are not answering the question. The answer has nothing to do with the question.

"Sen. SUMULONG. I would like to remind you, Mr. Arnault, that the reason that you gave during the investigation for not revealing the name of the person to whom you gave the P440,000 is not the same reason that you are now alleging because during the investigation you told us: 'I do not remember his name.' But, now, you are now saying: 'My answer might incriminate me.' What is your real position?

"Mr. ARNAULT. I have just stated that I stand by my statements that I made at the first, second, and third hearings. I said that I wanted to be excused from answering the question. I beg to be excused from making any answer that might be incriminating in nature. However, in this answer, if the detail of not remembering the name of the person has not been included, it is an oversight.

"Sen. SUMULONG. Mr. Arnault, will you kindly answer a simple question: Do you remember or not the name of the person to whom you gave the P440,000?

"Mr. ARNAULT. I do not remember.

"Sen. SUMULONG. Now, if you do not remember the name of that person, how can you say that your answer might be incriminating? If you do not remember his name, you cannot answer the question; so how could your answer be self-incriminating? What do you say to that?

"Mr. ARNAULT. This is too complicated for me to explain. Please, I do not see how to answer those questions. That is why I asked for a lawyer, so he can help me. I have no means of knowing what the situation is about. I have been in jail 13 days without communication with the outside. How could I answer the question? I have no knowledge of legal procedure or rule, of which I am completely ignorant.

"Sen. SUMULONG. Mr. President, I ask that the question be answered.

"The PRESIDENT. The witness is ordered to answer the question. It is very clear. It does not incriminate the witness.

* * * * *

"Mr. ARNAULT. I do not remember. I stand on my constitutional rights. I beg to be excused from making further answer, please.

* * * * *

"Sen. SUMULONG. In that mimeographed letter that you sent addressed to the President of the Senate, dated May 2, 1950, you stated there that you cannot reveal the name of the person to whom you gave the P440,000 because if he is a public official you might render yourself liable for prosecution for bribery, and that if he is a private individual you might render yourself liable for prosecution for slander. Why did you make those statements when you cannot even tell us whether that person to whom you gave the P440,000 is a public official or a private individual? We are giving you this chance to convince the Senate that all these allegations of yours that your answers might incriminate you are given by you honestly or you are just trying to make a pretext for not revealing the information desired by the Senate.

"The PRESIDENT. You are ordered to answer the question.

"Mr. ARNAULT. I do not even understand the question.

(The question is restated and explained.)

"Mr. ARNAULT. That letter of May 2 was prepared by a lawyer for me and I signed it. That is all I can say how I stand about this letter. I have no knowledge myself enough to write such a letter, so I had to secure the help of a lawyer to help me in my period of distress."

In that same session of the Senate before which the petitioner was called to show cause why he should not be adjudged guilty of contempt of the Senate, Senator Sumulong propounded to the petitioner questions tending to elicit information from him as to the identity of the person to whom he delivered the P440,000; but the petitioner refused to reveal it by saying that he did not remember. The President of the Senate then propounded to him various questions concerning his past activities dating as far back as when the witness was seven years of age and ending as recently as the post-liberation period, all of which questions the witness answered satisfactorily. In view thereof, the President of the Senate also made an attempt to elicit the desired information from the witness, as follows:

"The PRESIDENT. Now I am convinced that you have a good memory. Did you deliver the P440,000 as a gift, or for any consideration?

"Mr. ARNAULT. I have said that I had instructions to deliver it to that person, that is all.

"The PRESIDENT. Was it the first time you saw that person?

"Mr. ARNAULT. I saw him various times, I have already said.

"The PRESIDENT. In spite of that, you do not have the least remembrance of the name of that person?

"Mr. ARNAULT. I cannot remember.

"The PRESIDENT. How is it that you do not remember events that happened a short time ago and, on the other hand, you remember events that occurred during your childhood?

"Mr. ARNAULT. I cannot explain."

The Senate then deliberated and adopted the resolution of May 15 hereinabove quoted whereby the petitioner was committed to the custody of the Sergeant-at-Arms and imprisoned until "he shall have purged the contempt by revealing to the Senate or to the aforesaid Special Committee the name of the person to whom he gave the ₱440,000, as well as answer other pertinent questions in connection therewith."

The Senate also adopted on the same date another resolution (No. 16), to wit:

"That the Special Committee created by Senate Resolution No. 8 be empowered and directed to continue its investigation of the Tam-bobong and Buenavista Estates deal of October 21, 1949, more particularly to continue its examination of Jean L. Arnault regarding the name of the person to whom he gave the ₱440,000 and other matters related therewith."

The first session of the Second Congress was adjourned at midnight on May 18, 1950.

The case was argued twice before us. We have given it earnest and prolonged consideration because it is the first of its kind to arise since the Constitution of the Republic of the Philippines was adopted. For the first time this Court is called upon to define the power of either House of Congress to punish a person not a member for contempt; and we are fully conscious that our pronouncements here will set an important precedent for the future guidance of all concerned.

Before discussing the specific issues raised by the parties, we deem it necessary to lay down the general principles of law which form the background of those issues.

Patterned after the American system, our Constitution vests the powers of the Government in three independent but coordinate Departments—Legislative, Executive, and Judicial. The legislative power is vested in the Congress, which consists of the Senate and the House of Representatives. (Section 1, Article VI.) Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, expel a Member. (Section 10, Article VI.) The judicial power is vested in the Supreme Court and in such inferior courts as may be established by law. (Section 1, Article VIII.) Like the Constitution of the United States, ours does not contain an express provision empowering either of the two Houses of Congress to punish nonmembers for contempt. It may also be noted that whereas in the United States the legislative power is shared by and between the Congress of the United States, on the one hand, and the respective legislatures of the different States, on the other—the powers not delegated to the United States by the Constitution nor prohibited by it to States being reserved to the States, respectively, or to the

people—in the Philippines, the legislative power is vested in the Congress of the Philippines alone. It may therefore be said that the Congress of the Philippines has a wider range of legislative field than the Congress of the United States or any State Legislature.

Our form of government being patterned after the American system—the framers of our Constitution having drawn largely from American institutions and practices—we can, in this case, properly draw also from American precedents in interpreting analogous provisions of our Constitution, as we have done in other cases in the past.

Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which is not infrequently true—recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed. (*McGrain vs. Daugherty*, 273 U. S. 135; 71 L. ed., 580; 50 A. L. R., 1.) The fact that the Constitution expressly gives to Congress the power to punish its Members for disorderly behavior, does not by necessary implication exclude the power to punish for contempt any other person. (*Anderson vs. Dunn*, 6 Wheaton, 204; 5 L. ed., 242.)

But no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire. (*Kilbourn vs. Thompson*, 26 L. ed., 377.)

Since, as we have noted, the Congress of the Philippines has a wider range of legislative field than either the Congress of the United States or a State Legislature, we think it is correct to say that the field of inquiry into which it may enter is also wider. It would be difficult to define any limits by which the subject matter of its inquiry can be bounded. It is not necessary for us to do so in this case. Suffice it to say that it must be coextensive with the range of the legislative power.

In the present case the jurisdiction of the Senate through the Special Committee created by it, to investigate the Buenavista and Tambobong estates deal is not challenged

by the petitioner; and we entertain no doubt as to the Senate's authority to do so and as to the validity of Resolution No. 8 hereinabove quoted. The transaction involved a questionable and allegedly unnecessary and irregular expenditure of no less than ₱5,000,000 of public funds, of which Congress is the constitutional guardian. It also involved government agencies created by Congress and officers whose positions it is within the power of Congress to regulate or even abolish. As a result of the yet uncompleted investigation, the investigating committee has recommended and the Senate has approved three bills (1) prohibiting the Secretary of Justice or any other department head from discharging functions and exercising powers other than those attached to his own office, without previous congressional authorization; (2) prohibiting brothers and near relatives of any President of the Philippines from intervening directly or indirectly and in whatever capacity in transactions in which the Government is a party, more particularly where the decision lies in the hands of executive or administrative officers who are appointees of the President; and (3) providing that purchases of the Rural Progress Administration of big landed estates at a price of ₱100,000 or more, and loans guaranteed by the Government involving ₱100,000 or more, shall not become effective without previous congressional confirmation.¹

We shall now consider and pass upon each of the questions raised by the petitioner in support of his contention that his commitment is unlawful.

First. He contends that the Senate has no power to punish him for contempt for refusing to reveal the name of the person to whom he gave the ₱440,000, because such information is immaterial to, and will not serve, any intended or purported legislation and his refusal to answer the question has not embarrassed, obstructed, or impeded the legislative process. It is argued that since the investigating committee has already rendered its report and has made all its recommendations as to what legislative measures should be taken pursuant to its findings, there is no necessity to force the petitioner to give the information desired other than that mentioned in its report, to wit: "In justice to Judge Quirino and to Secretary Nepomuceno, this atmosphere of suspicion that now pervades the public mind must be dissipated, and it can only be done if appropriate steps are taken by the Senate to compel Arnault to stop pretending that he cannot remember the name of the person to whom he gave the ₱440,000 and answer questions which will definitely establish the identity of that person * * *." Senator Sumulong, Chairman of the Committee,

¹ These bills, however, have not yet been acted upon by the House of Representatives.

who appeared and argued the case for the respondents, denied that that was the only purpose of the Senate in seeking the information from the witness. He said that the investigation had not been completed, because, due to the contumacy of the witness, his committee had not yet determined the parties responsible for the anomalous transaction as required by Resolution No. 8; that, by Resolution No. 16, his committee was empowered and directed to continue its investigation, more particularly to continue its examination of the witness regarding the name of the person to whom he gave the ₱440,000 and other matters related therewith; that the bills recommended by his committee had not been approved by the House and might not be approved pending the completion of the investigation; and that those bills were not necessarily all the measures that Congress might deem it necessary to pass after the investigation is finished.

Once an inquiry is admitted or established to be within the jurisdiction of a legislative body to make, we think the investigating committee has the power to require a witness to answer any question pertinent to that inquiry, subject of course to his constitutional right against self-incrimination. The inquiry, to be within the jurisdiction of the legislative body to make, must be material or necessary to the exercise of a power in it vested by the Constitution, such as to legislate, or to expel a Member; and every question which the investigator is empowered to coerce a witness to answer must be material or pertinent to the subject of the inquiry or investigation. So a witness may not be coerced to answer a question that obviously has no relation to the subject of the inquiry. But from this it does not follow that every question that may be propounded to a witness must be material to any proposed or possible legislation. In other words, the materiality of the question must be determined by its direct relation to the subject of the inquiry and not by its indirect relation to any proposed or possible legislation. The reason is, that the necessity or lack of necessity for legislative action and the form and character of the action itself are determined by the sum total of the information to be gathered as a result of the investigation, and not by a fraction of such information elicited from a single question.

In this connection, it is suggested by counsel for the respondents that the power of the Court is limited to determining whether the legislative body has jurisdiction to institute the inquiry or investigation; that once that jurisdiction is conceded, this Court cannot control the exercise of that jurisdiction or the use of Congressional discretion; and, it is insinuated, that the ruling of the Senate on the materiality of the question propounded to

the witness is not subject to review by this Court under the principle of the separation of powers. We have to qualify this proposition. As was said by the Court of Appeals of New York: "We are bound to presume that the action of the legislative body was with a legitimate object if it is capable of being so construed, and we have no right to assume that the contrary was intended." (People *ex rel. McDonald vs. Keeler*, 99 N. Y., 463; 52 Am. Rep., 49; 2 N. E., 615, quoted with approval by the Supreme Court of the United States in *McGrain vs. Daugherty*, *supra*.) Applying this principle to the question at hand, we may concede that the ruling of the Senate on the materiality of the information sought from the witness is presumed to be correct. But, as noted by the Supreme Court of the United States in the said case of *McGrain vs. Daugherty*, it is a necessary deduction from the decision in *Re Chapman*, 41 L. ed., 1154, that where the questions are *not pertinent to the matter under inquiry* a witness rightfully may refuse to answer. So we are of the opinion that where the alleged immateriality of the information sought by the legislative body from a witness is relied upon to contest its jurisdiction, the court is in duty bound to pass upon the contention. The fact that the legislative body has jurisdiction or the power to make the inquiry would not preclude judicial intervention to correct a clear abuse of discretion in the exercise of that power.

Applying the criterion laid down in the last two preceding paragraphs to the resolution of the issue under consideration, we find that the question for the refusal to answer which the petitioner was held in contempt by the Senate is pertinent to the matter under inquiry. In fact, this is not and cannot be disputed. Senate Resolution No. 8, the validity of which is not challenged by the petitioner, requires the Special Committee, among other things, to determine the parties responsible for the Buenavista and Tambobong estates deal, and it is obvious that the name of the person to whom the witness gave the ₱440,000 involved in said deal is pertinent to that determination—it is in fact the very thing sought to be determined. The contention is not that the question is impertinent to the subject of the inquiry but that it has no relation or materiality to any proposed legislation. We have already indicated that it is not necessary for the legislative body to show that every question propounded to a witness is material to any proposed or possible legislation; what is required is that it be pertinent to the matter under inquiry.

The Court cannot determine, any more than it can direct Congress, what legislation to approve or not to approve; that would be an invasion of the legislative prerogative. The Court, therefore, may not say that the information sought from the witness which is material to the subject of

the legislative inquiry is immaterial to any proposed or possible legislation.

It is said that the Senate has already approved the three bills recommended by the Committee as a result of the uncompleted investigation and that there is no need for it to know the name of the person to whom the witness gave the ₦440,000. But aside from the fact that those bills have not yet been approved by the lower house and by the President and that they may be withdrawn or modified if after the inquiry is completed they should be found unnecessary or inadequate, there is nothing to prevent the Congress from approving other measures it may deem necessary after completing the investigation. We are not called upon, nor is it within our province, to determine or imagine what those measures may be. And our inability to do so is no reason for overruling the question propounded by the Senate to the witness.

The case of *Re Chapman*, 166 U. S., 661; 41 L. ed., 1154, is in point here. The inquiry there in question was conducted under a resolution of the Senate and related to charges, published in the press, that senators were yielding to corrupt influences in considering a tariff bill then before the Senate and were speculating in stocks the value of which would be affected by pending amendments to the bill. Chapman, a member of a firm of stock brokers dealing in the stock of the American Sugar Refining Company, appeared before the committee in response to a subpoena and was asked, among others, the following questions:

"Had the firm, during the month of March, 1894, bought or sold any stock or securities, known as sugar stocks, for or in the interest, directly or indirectly, of any United States senator?"

"Was the said firm at that time carrying any sugar stock for the benefit of, or in the interest, directly or indirectly, of any United States senator?"

He refused to answer those questions and was prosecuted under an Act of Congress for contempt of the Senate. Upon being convicted and sent to jail he petitioned the Supreme Court of the United States for a writ of habeas corpus. One of the questions decided by the Supreme Court of the United States in that case was whether the committee had the right to compel the witness to answer said questions, and the Court held that the committee did have such right, saying:

"The questions were undoubtedly *pertinent to the subject-matter of the inquiry*. The resolutions directed the committee to inquire 'whether any senator has been, or is, speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate.' *What the Senate might or might not do upon the facts when ascertained, we cannot say, nor are we called upon to inquire whether such ventures might be defensible, as contended in argument, but it is plain that negative answers would have cleared that body of what the Senate regarded as offensive imputations, while affirm-*

ative answers might have led to further action on the part of the Senate within its constitutional powers." (Italics ours.)

It may be contended that the determination of the parties responsible for the deal is incumbent upon the judicial rather than upon the legislative branch. But we think there is no basis in fact or in law for such assumption. The petitioner has not challenged the validity of Senate Resolution No. 8, and that resolution expressly requires the committee to determine the parties responsible for the deal. We are bound to presume that the Senate has acted in the due performance of its constitutional function in instituting the inquiry, if the act is capable of being so construed. On the other hand, there is no suggestion that the judiciary has instituted an inquiry to determine the parties responsible for the deal. Under the circumstances of the case, it appearing that the questioned transaction was effected by the head of the Department of Justice himself, it is not reasonable to expect that the Fiscal or the Court of First Instance of Manila will take the initiative to investigate and prosecute the parties responsible for the deal until and unless the Senate shall have determined who those parties are and shall have taken such measures as may be within its competence to take to redress the wrong that may have been committed against the people as a result of the transaction. As we have said, the transaction involved no less than P5,000,000 of public funds. That certainly is a matter of public concern which it is the duty of the constitutional guardian of the treasury to investigate.

If the subject of investigation before the committee is within the range of legitimate legislative inquiry *and the proposed testimony of the witness called relates to that subject*, obedience to its process may be enforced by the committee by imprisonment. (*Sullivan vs. Hill*, 73 W. Va., 49; 79 S. E., 670; 40 Ann. Cas. [1916 B.], 1115.)

The decision in the case of *Kilbourn vs. Thompson*, 26 L. ed., 377, relied upon by the petitioner, is not applicable here. In that case the inquiry instituted by the House of Representatives of the United States related to a private real-estate pool or partnership in the District of Columbia. Jay Cooke & Company had had an interest in the pool but had become bankrupts, and their estate was in course of administration in a federal bankruptcy court in Pennsylvania. The United States was one of their creditors. The trustee in the bankruptcy proceeding had effected a settlement of the bankrupts' interest in the pool, and of course his action was subject to examination and approval or disapproval by the bankruptcy court. Some of the creditors, including the United States, were dissatisfied with the settlement. The resolution of the House directed the Committee "to inquire into the nature

and history of said real-estate pool and the character of said settlement, with the amount of property involved, in which Jay Cooke & Co. were interested, and the amount paid or to be paid in said settlement, with power to send for persons and papers, and report to this House." The Supreme Court of the United States, speaking thru Mr. Justice Miller, pointed out that the resolution contained no suggestion of contemplated legislation; that the matter was one in respect of which no valid legislation could be had; that the bankrupts' estate and the trustee's settlement were still pending in the bankruptcy court; and that the United States and other creditors were free to press their claims in that proceeding. And on these grounds the court held that in undertaking the investigation "the House of Representatives not only exceeded the limit of its own authority, but assumed a power which could only be properly exercised by another branch of the government, because the power was in its nature clearly judicial." The principles announced and applied in that case are: that neither House of Congress possesses a "general power of making inquiry into the private affairs of the citizen"; that the power actually possessed is limited to inquiries relating to matters of which the particular House has jurisdiction, and in respect of which it rightfully may take other action; that if the inquiry relates to a matter wherein relief or redress could be had only by judicial proceeding, it is not within the range of this power, but must be left to the courts, conformably to the constitutional separation of governmental powers.

That case differs from the present case in two important respects: (1) There the court found that the subject of the inquiry, which related to a private real-estate pool or partnership, was not within the jurisdiction of either House of Congress; while here it is not disputed that the subject of the inquiry, which relates to a transaction involving a questionable expenditure by the Government of P5,000,000 of public funds, is within the jurisdiction of the Senate. (2) There the claim of the Government as a creditor of Jay Cooke & Company, which had had an interest in the pool, was pending adjudication by the court; while here the interposition of the judicial power on the subject of the inquiry cannot be expected, as we have pointed out above, until after the Senate shall have determined who the parties responsible are and shall have taken such measures as may be within its competence to take to redress the wrong that may have been committed against the people as a result of the transaction.

It is interesting to note that the decision in the case of *Kilbourn vs. Thompson* has evoked strong criticisms from legal scholars. (See Potts, *Power of Legislative Bodies to Punish for Contempt* [1926], 74 U. Pa. L. Rev.,

692-699; James M. Landis, *Constitutional Limitations on the Congressional Power of Investigation* [1926], 40 Harvard L. Rev., 153, 214-220.) We quote the following from Professor Landis' criticism: "Mr. Justice Miller saw the case purely as an attempt by the House to secure to the Government certain priority rights as creditor of the bankrupt concern. To him it assumed the character of a lawsuit between the Government and Jay Cooke & Co., with the Government, acting through the House, attempting to override the orderliness of established procedure and thereby prefer a creditors' bill not before the courts but before Congress. That bankruptcy proceedings had already been instituted against Jay Cooke & Co. in a federal court gave added impetus to such a conception. The House was seeking to oust a court of prior acquired jurisdiction by an extraordinary and unwarranted assumption of 'judicial power'! The broader aspect of the investigation had not been disclosed to the Court. That Jay Cooke & Co.'s indebtedness and the particular funds in question were only part of the great administrative problem connected with the use and disposition of public monies, that the particular failure was of consequence mainly in relation to the security demanded for all government deposits, that the facts connected with one such default revealed the possibility of other and greater maladministration, such considerations had not been put before the Court. Nor had it been acquainted with the every-day nature of the particular investigation and the powers there exerted by the House, powers whose exercise was customary and familiar in legislative practice. Instead of assuming the character of an extraordinary judicial proceeding, the inquiry, placed in its proper background, should have been regarded as a normal and customary part of the legislative process. Detailed definiteness of legislative purpose was thus made the demand of the Court in *Kilbourn vs. Thompson*. But investigators cannot foretell the results that may be achieved. The power of Congress to exercise control over a real-estate pool is not a matter for abstract speculation but one to be determined only after an exhaustive examination of the problem. Relationship, and not their possibilities, determine the extent of congressional power. Constitutionality depends upon such disclosures. Their presence, whether determinative of legislative or judicial power, cannot be relegated to guesswork. Neither Congress nor the Court can predict, prior to the event, the result of investigation."

The other case relied upon by the petitioner is *Marshall vs. Gordon*, 243 U. S., 521; 61 L. ed., 881. The question there was whether the House of Representatives exceeded its power in punishing, as for contempt of its authority, the District Attorney of the Southern District of New

York, who had written, published, and sent to the chairman of one of its committees an ill-tempered and irritating letter respecting the action and purposes of the committee in interfering with the investigation by the grand jury of alleged illegal activities of a member of the House of Representatives. Power to make inquiries and obtain evidence by compulsory process was not involved. The court recognized distinctly that the House of Representatives had implied power to punish a person not a member for contempt, but held that its action in this instance was without constitutional justification. The decision was put on the ground that the letter, while offensive and vexatious, was not calculated or likely to affect the House in any of its proceedings or in the exercise of any of its functions. This brief statement of the facts and the issues decided in that case is sufficient to show the inapplicability thereof to the present case. There the contempt involved consisted in the district attorney's writing to the chairman of the committee an offensive and vexatious letter, while here the contempt involved consists in the refusal of the witness to answer questions pertinent to the subject of an inquiry which the Senate has the power and jurisdiction to make. But in that case it was recognized that the House of Representatives has implied power to punish a person not a member for contempt. In that respect the case is applicable here in favor of the Senate's (and not of the petitioner's) contention.

Second. It is next contended for the petitioner that the Senate lacks authority to commit him for contempt for a term beyond its period of legislative session, which ended on May 18, 1950. This contention is based on the opinion of Mr. Justice Malcolm, concurred in by Justices Street and Villa-Real, in the case of *Lopez vs. De los Reyes* (1930), 55 Phil., 170. In that case it appears that on October 23, 1929, Candido Lopez assaulted a member of the House of Representatives while the latter was going to the hall of the House of Representatives to attend the session which was then about to begin, as a result of which assault said representative was unable to attend the sessions on that day and those of the two days next following by reason of the threats which Candido Lopez made against him. By resolution of the House adopted November 6, 1929, Lopez was declared guilty of contempt of the House of Representatives and ordered punished by confinement in Bilibid Prison for a period of twenty-four hours. That resolution was not complied with because the session of the House of Representatives adjourned at midnight on November 8, 1929, and was reiterated at the next session on September 16, 1930. Lopez was subsequently arrested, whereupon he applied for the writ of habeas corpus in the Court of First Instance of Manila,

which denied the application. Upon appeal to the Supreme Court, six justices voted to grant the writ: Justices Malcolm, Street, and Villa-Real, on the ground that the term of imprisonment meted out to the petitioner could not legally be extended beyond the session of the body in which the contempt occurred; and Justices Johns, Villamor, and Ostrand, on the ground that the Philippine Legislature had no power to punish for contempt because it was a creature merely of an Act of the Congress of the United States and not of a Constitution adopted by the people. Chief Justice Avanceña, Justice Johnson, and Justice Romualdez wrote separate opinions, concurring with Justices Malcolm, Street, and Villa-Real, that the Legislature had inherent power to punish for contempt but dissenting from the opinion that the order of commitment could only be executed during the particular session in which the act of contempt was committed.

Thus, on the question under consideration, the Court was equally divided and no decisive pronouncement was made. The opinion of Mr. Justice Malcolm is based mainly on the following passage in the case of *Anderson vs. Dunn, supra*:

"And although the legislative power continues perpetual, the legislative body ceases to exist on the moment of its adjournment or periodical dissolution. It follows that imprisonment must terminate with that adjournment."

as well as on the following quotation from *Marshall vs. Gordon, supra*:

"And the essential nature of the power also makes clear the co-gency and application of the two limitations which were expressly pointed out in *Anderson vs. Dunn, supra*, that is, that the power even when applied to subjects which justified its exercise is limited to imprisonment and such imprisonment may not be extended beyond the session of the body in which the contempt occurred."

Interpreting the above quotations, Chief Justice Avanceña held:

"From this doctrine it follows, in my judgment, that the imposition of the penalty is limited to the existence of the legislative body, which ceases to function upon its final periodical dissolution. The doctrine refers to its existence and not to any particular session thereof. This must be so, inasmuch as the basis of the power to impose such penalty is the right which the Legislature has to self-preservation, and which right is enforceable during the existence of the legislative body. Many causes might be conceived to constitute contempt to the Legislature, which would continue to be a menace to its preservation during the existence of the legislative body against which contempt was committed.

"If the basis of the power of the legislature to punish for contempt exists while the legislative body exercising it is in session, then that power and the exercise thereof must perforce continue until its final adjournment and the election of its successor."

Mr. Justice Johnson's more elaborate opinion, supported by quotations from Cooley's *Constitutional Limitations*

and from Jefferson's *Manual*, is to the same effect. Mr. Justice Romualdez said: "In my opinion, where, as in the case before us, the members composing the legislative body against which the contempt was committed have not yet completed their three-year term, the House may take action against the petitioner herein."

We note that the quotations from *Anderson vs. Dunn* and *Marshall vs. Gordon* relied upon by Justice Malcolm are *obiter dicta*. *Anderson vs. Dunn* was an action of trespass against the Sergeant-at-Arms of the House of Representatives of the United States for assault and battery and false imprisonment. The plaintiff had been arrested for contempt of the House, brought before the bar of the House, and reprimanded by the Speaker, and then discharged from custody. The question as to the duration of the penalty was not involved in that case. The question there presented was "whether the House of Representatives can take cognizance of contempts committed against themselves, under any circumstances." The court there held that the House of Representatives had the power to punish for contempt, and affirmed the judgment of the lower court in favor of the defendant. In *Marshall vs. Gordon*, the question presented was whether the House had the power under the Constitution to deal with the conduct of the district attorney in writing a vexatious letter as a contempt of its authority, and to inflict punishment upon the writer for such contempt as a matter of legislative power. The court held that the House had no such power because the writing of the letter did not obstruct the performance of legislative duty and did not endanger the preservation of the power of the House to carry out its legislative authority. Upon that ground alone, and not because the House had adjourned, the court ordered the discharge of the petitioner from custody.

The case where the question was squarely decided is *McGrain vs. Daugherty, supra*. There it appears that the Senate had adopted a resolution authorizing and directing a select committee of five senators to investigate various charges of misfeasance and nonfeasance in the Department of Justice after Attorney General Harry M. Daugherty became its supervising head. In the course of the investigation the committee caused to be served on Mally S. Daugherty, brother of Harry M. Daugherty and president of the Midland National Bank of Washington Court House, Ohio, a subpoena commanding him to appear before it for the purpose of giving testimony relating to the subject under consideration. The witness failed to appear without offering any excuse for his failure. The committee reported the matter to the Senate and the latter adopted a resolution, "That the President of the Senate pro tempore issue his warrant commanding the Sergeant-at-Arms or

his deputy to take into custody the body of the said M. S. Daugherty wherever found, and to bring the said M. S. Daugherty before the bar of the Senate, then and there to answer such questions pertinent to the matter under inquiry as the Senate may order the President of the Senate pro tempore to propound; and to keep the said M. S. Daugherty in custody to await the further order of the Senate." Upon being arrested, the witness petitioned the federal court in Cincinnati for a writ of habeas corpus. The federal court granted the writ and discharged the witness on the ground that the Senate, in directing the investigation and in ordering the arrest, exceeded its power under the Constitution. Upon appeal to the Supreme Court of the United States, one of the contentions of the witness was that the case had become moot because the investigation was ordered and the committee was appointed during the Sixty-eighth Congress, which expired on March 4, 1925. In overruling the contention, the court said:

"* * * The resolution ordering the investigation in terms limited the committee's authority to the period of the Sixty-eighth Congress; but this apparently was changed by a later and amendatory resolution authorizing the committee to sit at such times and places as it might deem advisable or necessary. It is said in Jefferson's Manual: 'Neither House can continue any portion of itself in any parliamentary function beyond the end of the session without the consent of the other two branches. When done, it is by a bill constituting them commissioners for the particular purpose.' But the context shows that the reference is to the two houses of Parliament when adjourned by prorogation or dissolution by the King. The rule may be the same with the House of Representatives whose members are all elected for the period of a single Congress; but it cannot well be the same with the Senate, which is a continuing body whose members are elected for a term of six years and so divided into classes that the seats of one third only become vacant at the end of each Congress, two thirds always continuing into the next Congress, save as vacancies may occur through death or resignation.

"Mr. Hinds in his collection of precedents, says: 'The Senate, as a continuing body, may continue its committees through the recess following the expiration of a Congress;' and, after quoting the above statement from Jefferson's Manual, he says: 'The Senate, however, being a continuing body, gives authority to its committees during the recess after the expiration of a Congress.' So far as we are advised the select committee having this investigation in charge has neither made a final report nor been discharged; nor has it been continued by an affirmative order. Apparently its activities have been suspended pending the decision of this case. But, be this as it may, it is certain that the committee may be continued or revived now by motion to that effect, and, if continued or revived, will have all its original powers. This being so, and the Senate being a continuing body, the case cannot be said to have become moot in the ordinary sense. The situation is measurably like that in *Southern P. Terminal Co. vs. Interstate Commerce Commission*, 219 U. S., 498, 514-516; 55 L. ed., 310, 315, 316; 31 Sup. Ct. Rep., 279, where it was held that a suit to enjoin the enforcement of an order of the Interstate Commerce Commission did not become moot through the expiration of the order where it was capable of repe-

tition by the Commission and was a matter of public interest. Our judgment may yet be carried into effect and the investigation proceeded with from the point at which it apparently was interrupted by reason of the habeas corpus proceedings. In these circumstances we think a judgment should be rendered as was done in the case cited.

"What has been said requires that the final order in the District Court discharging the witness from custody be reversed."

Like the Senate of the United States, the Senate of the Philippines is a continuing body whose members are elected for a term of six years and so divided that the seats of only one-third become vacant every two years, two-thirds always continuing into the next Congress save as vacancies may occur thru death or resignation. Members of the House of Representatives are all elected for a term of four years; so that the term of every Congress is four years. The Second Congress of the Philippines was constituted on December 30, 1949, and will expire on December 30, 1953. The resolution of the Senate committing the petitioner was adopted during the first session of the Second Congress, which began on the fourth Monday of January and ended on May 18, 1950.

Had said resolution of commitment been adopted by the House of Representatives, we think it could be enforced until the final adjournment of the last session of the Second Congress in 1953. We find no sound reason to limit the power of a legislative body to punish for contempt to the end of every session and not to the end of the last session terminating the existence of that body. The very reason for the exercise of the power to punish for contempt is to enable the legislative body to perform its constitutional function without impediment or obstruction. Legislative functions may be and in practice are performed during recess by duly constituted committees charged with the duty of performing investigations or conducting hearings relative to any proposed legislation. To deny to such committees the power of inquiry with process to enforce it would be to defeat the very purpose for which that power is recognized in the legislative body as an essential and appropriate auxiliary to its legislative function. It is but logical to say that the power of self-preservation is coexistent with the life to be preserved.

But the resolution of commitment here in question was adopted by the Senate, which is a continuing body and which does not cease to exist upon the periodical dissolution of the Congress or of the House of Representatives. There is no limit as to time to the Senate's power to punish for contempt in cases where that power may constitutionally be exerted as in the present case.

Mere reflection upon the situation at hand convinces us of the soundness of this proposition. The Senate has ordered an investigation of the Buenavista and Tambobong estates

deal, which we have found it is within its competence to make. That investigation has not been completed because of the refusal of the petitioner as a witness to answer certain questions pertinent to the subject of the inquiry. The Senate has empowered the committee to continue the investigation during the recess. By refusing to answer the questions, the witness has obstructed the performance by the Senate of its legislative function, and the Senate has the power to remove the obstruction by compelling the witness to answer the questions thru restraint of his liberty until he shall have answered them. That power subsists as long as the Senate, which is a continuing body, persists in performing the particular legislative function involved. To hold that it may punish the witness for contempt only during the session in which investigation was begun, would be to recognize the right of the Senate to perform its function but at the same time to deny to it an essential and appropriate means for its performance. Aside from this, if we should hold that the power to punish for contempt terminates upon the adjournment of the session, the Senate would have to resume the investigation at the next and succeeding sessions and repeat the contempt proceedings against the witness until the investigation is completed—an absurd, unnecessary, and vexatious procedure, which should be avoided.

As against the foregoing conclusion it is argued for the petitioner that the power may be abusively and oppressively exerted by the Senate which might keep the witness in prison for life. But we must assume that the Senate will not be disposed to exert the power beyond its proper bounds. And if, contrary to this assumption, proper limitations are disregarded, the portals of this Court are always open to those whose rights might thus be transgressed.

Third. Lastly, the petitioner invokes the privilege against self-incrimination. He contends that he would incriminate himself if he should reveal the name of the person to whom he gave the ₦440,000 because if that person be a public official he (witness) might be accused of bribery, and if that person be a private individual the latter might accuse him of oral defamation.

The ground upon which the witness' claim is based is too shaky, infirm, and slippery to afford him safety. At first he told the Committee that the transactions were legal, that no laws were violated, and that all requisites had been complied with; but at the same time he begged to be excused from making answers "which might later be used against me." A little later he explained that although the transactions were legal he refused to answer questions concerning them "because it violates the rights of a citizen to privacy in his dealings with other people. * * * I simply stand on my privilege to dispose of the money that

has been paid to me as a result of a legal transaction without having to account for any use of it." But after being apparently convinced by the Committee that his position was untenable, the witness testified that, without securing any receipt, he turned over the ₱440,000 to a certain person, a representative of Burt, in compliance with Burt's verbal instruction made in 1946; that, as far as he knew, that certain person had nothing to do with the negotiations for the settlement of the Buenavista and Tambobong cases; that he had seen that person several times before he gave him the ₱440,000 on October 29, 1949, and that since then he had seen him again two or three times, the last time being in December, 1949, in Manila; that the person was a male, 38 to 40 years of age, between 5 feet, 2 inches and 5 feet, 6 inches in height. But the witness would not reveal the name of that person on these pretexts: "I don't remember the name; he was a representative of Burt." "I am not sure; I don't remember the name."

We are satisfied that those answers of the witness to the important question, What is the name of that person to whom you gave the ₱440,000? were obviously false. His insistent claim before the bar of the Senate that if he should reveal the name he would incriminate himself, necessarily implied that he knew the name. Moreover, it is unbelievable that he gave ₱440,000 to a person to him unknown.

"Testimony which is obviously false or evasive is equivalent to a refusal to testify and is punishable as contempt, assuming that a refusal to testify would be so punishable." (12 Am. Jur., sec. 15, Contempt, pp. 399-400.) In the case of *Mason vs. U. S.*, 61 L. ed., 1198, it appears that Mason was called to testify before a grand jury engaged in investigating a charge of gambling against six other men. After stating that he was sitting at a table with said men when they were arrested, he refused to answer two questions, claiming so to do might tend to incriminate him: (1) "Was there a game of cards being played on this particular evening at the table at which you were sitting?" (2) "Was there a game of cards being played at another table at this time?" The foreman of the grand jury reported the matter to the judge, who ruled "that each and all of said questions are proper and that the answers thereto would not tend to incriminate the witnesses." Mason was again called and he refused to answer the first question propounded to him, but, half yielding to frustration, he said in response to the second question: "I don't know." In affirming the conviction for contempt, the Supreme Court of the United States among other things said:

"In the present case the witnesses certainly were not relieved from answering merely because they declared that so to do might incriminate them. The wisdom of the rule in this regard is well

illustrated by the enforced answer, 'I don't know,' given by Mason to the second question, after he had refused to reply under a claim of constitutional privilege."

Since according to the witness himself the transaction was legal, and that he gave the P440,000 to a representative of Burt in compliance with the latter's verbal instruction, we find no basis upon which to sustain his claim that to reveal the name of that person might incriminate him. There is no conflict of authorities on the applicable rule, to wit:

"Generally, the question whether testimony is privileged is for the determination of the Court. At least, it is not enough for the witness to say that the answer will incriminate him, as he is not the sole judge of his liability. The danger of self-incrimination must appear reasonable and real to the court, from all the circumstances, and from the whole case, as well as from his general conception of the relations of the witness. Upon the facts thus developed, it is the province of the court to determine whether a direct answer to a question may criminate or not. * * * The fact that the testimony of a witness may tend to show that he has violated the law is not sufficient to entitle him to claim the protection of the constitutional provision against self-incrimination, unless he is at the same time liable to prosecution and punishment for such violation. The witness cannot assert his privilege by reason of some fanciful excuse, for protection against an imaginary danger, or to secure immunity to a third person." (3 Wharton's *Criminal Evidence*, 11th ed., secs. 1135, 1136.)

"It is the province of the trial judge to determine from all the facts and circumstances of the case whether the witness is justified in refusing to answer. (*People vs. Conzo*, 23 N. E. [2d], 210 [Ill. App., 1939.]) A witness is not relieved from answering merely on his own declaration that an answer might incriminate him, but rather it is for the trial judge to decide that question." (*Mason vs. U. S.*, 244 U. S., 362; 61 L. ed., 1198, 1200.)

As against witness's inconsistent and unjustified claim to a constitutional right, is his clear duty as a citizen to give frank, sincere, and truthful testimony before a competent authority. The state has the right to exact fulfilment of a citizen's obligation, consistent of course with his right under the Constitution. The witness in this case has been vociferous and militant in claiming constitutional rights and privileges but patently recreant to his duties and obligations to the Government which protects those rights under the law. When a specific right and a specific obligation conflict with each other, and one is doubtful or uncertain while the other is clear and imperative, the former must give way to the latter. The right to life is one of the most sacred that the citizen may claim, and yet the state may deprive him of it if he violates his corresponding obligation to respect the life of others. As Mr. Justice Johnson said in *Anderson vs. Dunn*: "The wretch beneath the gallows may repine at the fate which awaits him, and yet it is no less certain that the laws under which he suffers were made for his security." Paraphrasing

and applying that pronouncement here, the petitioner may not relish the restraint of his liberty pending the fulfilment by him of his duty, but it is no less certain that the laws under which his liberty is restrained were made for his welfare.

From all the foregoing, it follows that the petition must be denied, and it is so ordered, with costs.

Parás, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

TUASON, J., dissenting:

The estates deal which gave rise to petitioner's examination by a committee of the Senate was one that aroused popular indignation as few cases of graft and corruption have. The investigation was greeted with spontaneous outburst of applause by an outraged citizenry, and the Senate was rightly commended for making the lead in getting at the bottom of an infamous transaction.

All the more necessary it is that we should approach the consideration of this case with circumspection, lest the influence of strong public passions should get the better of our judgment. It is trite to say that public sentiment fades into insignificance before a proper observance of constitutional processes, the maintenance of the constitutional structure, and the protection of individual rights. Only thus can a government of laws, the foundation stone of human liberty, be strengthened and made secure for that very public.

It is with these thoughts in mind that, with sincere regret, I am constrained to dissent.

The power of legislative bodies under the American system of government to punish for contempt was at the beginning totally denied by some courts and students of constitutional law, on the ground that this power is judicial in nature and belongs to the judiciary branch of the government under the constitutional scheme. The point however is now settled in favor of the existence of the power. This rule is based on the necessity for the attainment of the ends for which legislative body is created. Nor can the legitimacy of the purpose of the investigation which the Senate ordered in this case be disputed. As a corollary, it was likewise legitimate and necessary for the committee to summon the petitioner with a command to produce his books and documents, and to commit him to prison for his refusal or failure to obey the subpœna. And, finally, there is no question that the arresting officers were fully justified in using necessary bodily force to bring him before the bar of the Senate when he feigned illness and stalled for time in the mistaken belief that after the closing of the then current session of Congress he could go scot-free.

At the same time, there is also universal agreement that the power is not absolute. The disagreement lies in the extent of the power, and such disagreement is to be found even between decisions of the same court. *Anderson vs. Dunn*, 6 Wheat. 204, may be said to have taken the most liberal view of the legislature's authority, and *Kilbourn vs. Thompson*, 103 U. S., 168, which partly overruled and qualified the former, the strictest. By the most liberal standard the power is restricted "by considerations as to the nature of the inquiry, occasion, or action in connection with which the contemptuous conduct has occurred." Punishment must be resorted to for the efficient exercise of the legislative function. Even *Anderson vs. Dunn* speaks of the power as "the least possible power adequate to the end proposed."

Judged by any test, the question propounded to the witness does not, in my opinion, meet the constitutional requirement. It is obvious, I think, that the query has nothing to do with any matter within the cognizance of the Congress. There is, on the contrary, positive suggestion that the question has no relation to the contemplated legislation. The statement of the committee in its report that the information sought to be obtained would clear the names of the persons suspected of having received the money, is, on the surface, the most or only plausible reason that can be advanced. Assuming this to be the motive behind the question, yet little reflection will show that the same is beyond the scope of legislative authority and prerogatives. It is outside the concern of the Congress to protect the honor of particular citizens except that of its own members' as a means of preserving respect and confidence in that body. Moreover, the purported good intention must assume, if it is to materialize, that the persons under suspicion are really innocent; for if they are not and the witness will tell the truth, the result will be to augment their disgrace rather than vindicate their honor. This is all the more likely to happen because one of those persons, is, judged from the committee's findings, the most likely one, to say the least, who got the money.

If the process of deduction is pressed further, the reasonable conclusion seems to be that the object of the question is, to mention only one, to prepare the way for a court action. The majority decision indirectly admits or insinuates this to be the case. It says, "It appearing that the questioned transaction was effected by the head of the Department of Justice himself, it is not reasonable to expect the fiscal or the Court of First Instance of Manila will take the initiative to investigate and prosecute the parties responsible for the deal until and unless the Senate shall have determined who those parties are and shall

have taken such measures as may be within its competence to take, to redress the wrong that may have been committed against the people as a result of the transaction." So here is an admission, implied if not express, that the Senate wants the witness to give names because the fiscal or the courts will not initiate an action against parties who should be prosecuted. It is needless to say that the institution of a criminal or civil suit is a matter that devolves upon other departments of the government, alien to the duties of the Congress to look after.

The Congress is at full liberty, of course, to make any investigation for the purpose of aiding the fiscal or the courts, and ask any question which a witness may please to answer, but this liberty does not carry with it the authority to imprison persons who refuse to testify.

In the intricacy and complexity of an investigation it is often impossible to foretell before its close what relation certain facts may bear on the final results, and experience has shown that investigators and courts would do well to veer on the liberal side in the resolution of doubtful questions. But the Senate is not now in the midst of an inquiry with the situation still in a fluid or tentative state. Now the facts are no longer confused. The committee has finished its investigation and submitted its final report and the Senate has approved a bill on the basis of the facts found. All the pertinent facts having been gathered, as is to be inferred from that report and the nature of the Senate's action, every question, every fact, every bit of testimony has taken a distinct meaning susceptible of concrete and definite evaluation; the task has been reduced to the simple process of sifting the grain from the chaffs.

In the light of the committee's report and of the bill introduced and approved in the Senate, it seems quite plain that the express naming of the recipient or recipients of the money is entirely unessential to anything the Senate has a right or duty to do in the premises. Names may be necessary for the purpose of criminal prosecution, impeachment or civil suit. In such proceedings, identities are essential. In some legislative investigations it is important to know the names of public officials involved. But the particular disclosure sought of the petitioner here is immaterial to the proposed law. It is enough for the Senate, for its own legitimate object, to learn how the Department of Justice was being run, to know the part the Secretary of Justice had in the purchase, and to have a moral conviction as to the identity of the person who benefited thereby. The need for such legislation as was envisaged in the resolution and translated into the bill approved by the Senate is met by an insight into a broad outline of the deal. To paraphrase the U. S. Supreme Court in *Anderson vs. Dunn*, although the passage was used in another connection, legis-

lation is a science of experiment and the relation between the legislator and the end does not have to be so direct as to strike the eye of the former.

One of the proposed laws prohibits brothers and near relatives of any president of the Philippines from intervening directly or indirectly in transactions in which the Government is a party. It is stated that this is subject to change depending on the answer Arnault may give. This statement is wide open to challenge.

If Arnault should name Antonio Quirino it must be admitted that the bill would not be altered. But let us suppose that the witness will point to another man. Will the result be any different? Will the Senate recall the bill? I can not perceive the slightest possibility of such eventuality. The pending bill was framed on the assumption that Antonio Quirino was a party to the deal in question. As has been said, the committee entertains a moral conviction that this brother of the President was the recipient of a share of the proceeds of sale. No amount of assurance by Arnault to the contrary would be believed by the committee in the face of his absolute unreliability for truth. And, I repeat, the proposed legislation does not need for its justification legal evidence of Antonio Quirino's intervention in the transaction.

All this in the first place. In the second place, it is not to be assumed that the present bill is aimed solely against Antonio Quirino whose relation to the Administration is but temporary. It is more reasonable to presume that the proposed enactment is intended for all time and for all brothers of future presidents, for in reality it is no more than an extension or enlargement of laws already found in the statute book which guard against temptations to exploit official positions or influence to the prejudice of public interests.

The disputed question is, in fact, not only irrelevant but moot. This is decisive of the irrelevancy of this question. As has been noticed, the committee has submitted its final report and recommendation, and a bill has been approved by the Senate calculated to prevent recurrence of the anomalies exposed. For the purpose for which it was instituted the inquiry is over and the committee's mission accomplished.

It is true that the committee continues to sit during the recess of Congress, but it is obvious from all the circumstances that the sole and real object of the extension of the committee's sittings is to receive the witness' answer in the event he capitulates. I am unable to see any new phase of the deal which the Senate could legitimately wish to know, and the respondents and this Court have not pointed out any. That the committee has not sat and nothing has been done so far except to wait for Arnault's

answer is a convincing manifestation of the above conclusion.

The order "to continue its investigation" contained in Senate Resolution No. 16 cannot disguise the realities revealed by the Senate's actions already referred to and by the emphasis given to the instruction "to continue its (committee's) examination of Jean L. Arnault regarding the name of the person to whom he gave the P440,000." The instruction "to continue the investigation" is not entitled to the blind presumption that it embraces matters other than the revelation by the witness of the name of the person who got the money. Jurisdiction to deprive a citizen of liberty outside the usual process is not acquired by innuendos or vague assertions of the facts on which jurisdiction is made to depend. If the judgment of a court of law of limited jurisdiction does not enjoy the presumption of legality, much less can the presumption of regularity be invoked for a resolution of a deliberative body whose power to inflict punishment upon private citizens is wholly derived by implication and vehemently contested by some judges. At any rate, "the stronger presumption of innocence attends accused at the trial", and "it is incumbent" upon the respondents "to show that the question pertains to some matter under investigation." (*Sinclair vs. U. S.*, 73 L. ed., 693.) This rule stems from the fact that the power is in derogation of the constitutional guarantee that no person shall be deprived of life, liberty or property without due process of law, which presupposes "a trial in which the rights of the parties shall be decided by a tribunal appointed by law, which tribunal is to be governed by rules of law previously established." Powers so dangerous to the liberty of a citizen can not be allowed except where the pertinency is clear. A Judge who abuses such power may be impeached and he acts at all times under the sense of this accountability and responsibility. His victims may be reached by the pardoning power. But if the Congress be allowed this unbounded jurisdiction of discretion, there is no redress. The Congress may dispoil of a citizen's life, liberty or property and there is no power on earth to stop its hand. There is, there can be, no such unlimited power in any department of the government of the Republic. (*Loan Association vs. Topeka*, 20 Wall. 662, 663; *Taylor vs. Porter*, 4 Hill N. Y., 140.)

The above rule and discussion apply with equal force to the instruction to the committee in the original resolution, "to determine the parties responsible for the deal." It goes without saying that the Congress cannot authorize a committee to do what it itself cannot do. In other words, the Senate could not insist on the disclosure of Arnault's accomplice in the present state of the investigation if the

Senate were conducting the inquiry itself instead of through a committee.

Our attention is called to the fact that "in the Philippines, the legislative power is vested in the Congress of the Philippines alone, and therefore that the Congress of the Philippines has a wider range of legislative field than the Congress of the United States or any State Legislature." From this premise the inference is drawn that "the field of inquiry into which it (Philippine Congress) may enter is also wider."

This argument overlooks the important fact that congressional or legislative committees both here and in the United States do not embark upon fishing expeditions in search of information which by chance may be useful to legislation. Inquiries entrusted to congressional committee, whether here or in the United States, are necessarily for specific objects within the competence of the Congress to look into. I do not believe any reason, rule or principle could be found which would sustain the theory that just because the United States Congress or a state legislature could legislate on, say, only ten subjects and the Philippine Congress on twenty, the latter's power to commit to prison for contempt is proportionately as great as that of the former. In the consideration of the legality of an imprisonment for contempt by each House, the power is gauged not by the greater or lesser number of subject-matters that fall within its sphere of action, but by the answer to the question, has it jurisdiction over the matter under investigation? Bearing this distinction in mind, it is apparent that the power of a legislature to punish for contempt can be no greater nor less than that of any other. Were it possible for the Philippine Senate and the United States Senate to undertake an investigation of exactly identical anomalies in their respective departments of justice, could it be asserted with any support of logic that one Senate has a wider authority to imprison for contempt in such investigation simply because it has a "wider range of legislative field?"

It is said that the Senate bill has not been acted upon by the lower house and that even if it should pass in that chamber it would still have the President's veto to hurdle. It has been expressly stated at the oral argument, and there is insinuation in this Court's decision, that the revelation of the name or names of the person or persons who received the money may help in convincing the House of Representatives or the President of the wisdom of the pending measure. Entirely apart from the discussion in the preceding paragraphs, it is enough answer to this that the House of Representatives and the Chief Executive have their own idea of what they need to guide them in the

discharge of their respective duties, and they have the facilities of their own for obtaining the requisite data.

There is another objection, more fundamental, to the Senate invoking the interest or convenience of the other House or the President as ground of jurisdiction. The House of Representatives and the President are absolutely independent of the Senate in the conduct of legislative and administrative inquiries, and the power of each House to imprison for contempt does not go beyond the necessity for its own self-preservation or for making its express powers effective. Each House exercises this power to protect or accomplish its own authority and not that of the other House or the President. Each House and the President are supposed to take care of their respective affairs. The two Houses and the Chief Executive act separately although the concurrence of the three is required in the passage of legislation and of both Houses in the approval of resolutions. As the United States Supreme Court in *Kilbourn vs. Thompson*, said, "No general power of inflicting punishment by the Congress (as distinct from a House) is found in the Constitution." "An act of Congress—it said—which proposed to adjudge a man guilty of a crime and inflict the punishment, will be considered by all thinking men to be unauthorized by the Constitution."

Kilbourn vs. Thompson, *supra*, it is said, can not be relied on in this case as a precedent because, so it is also said, "the subject of the inquiry, which related to a private real-estate pool or partnership, was not within the jurisdiction of either House of Congress; while here it is not disputed that the subject of the inquiry, which relates to a transaction involving a questionable expenditure by the Government of P5,000,000 of public funds, is within the jurisdiction of the Senate." Yet the remarks of Judge Landis which are quoted in the majority decision point out that the inquiry "was a normal and customary part of the legislative process." Moreover, *Kilbourn vs. Thompson* is important, not for the matter it treated but for the principles it enunciated.

It is also said that *Kilbourn vs. Thompson* did not meet with universal approval as Judge Landis' article above mentioned shows. The jurist who delivered the opinion in that case, Mr. Justice Miller, was one of the "giants" who have ever sat on the Supreme Federal Bench, venerated and eminent for the width and depth of his learning. Subsequent decisions, as far as I have been able to ascertain, have not rejected or criticized but have followed it, and it still stands as a landmark in this branch of constitutional law.

If we can lean on private opinions and magazine articles for comfort, the petitioner can cite one by a legal scholar and author no less renown and respected than Judge Landis.

I refer to Judge Wigmore who, referring to an investigation of the U. S. Department of Justice said in an article published in 19 (1925) Illinois Law Review, 452:

"The senatorial debauch of investigations—poking into political garbage cans and dragging the sewers of political intrigue—filled the winter of 1923-24 with a stench which has not yet passed away. Instead of employing the constitutional, manly, fair procedure of impeachment, the Senate flung self-respect and fairness to the winds. As a prosecutor, the Senate presented a spectacle which cannot even be dignified by a comparison with the persecutive scoldings of Coke and Scroggs and Jeffreys, but fell rather in popular estimate to the level of professional searchers of the municipal dunghills."

It is far from my thought to subscribe to this vituperation as applied to our Senate. Certainly, this august body did not only do the right thing but is entitled to the lasting gratitude of the people for taking the courageous stand it did in probing into an anomaly that robbed a depleted treasury of a huge amount. I have tried to make it clear that my disagreement with the majority lies not in the propriety or constitutionality of the investigation but in the pertinency to that investigation of a single question. The investigation, as has been said, was legal and commendable. My objection is that the Senate having started within the bounds of its authority, has, in entire good faith, overstepped those bounds and trespassed on a territory reserved to other branches of the government, when it imprisoned a witness for contumacy on a point that is unimportant, useless, impertinent and irrelevant, let alone moot.

Thus understood, this humble opinion does not conflict with the views of Judge Landis and all other advocates of wide latitude for congressional investigations. All are agreed, and the majority accept the proposition, that there is a limit to the legislative power to punish for contempt. The limit is set in *Anderson vs. Dunn* which Judge Landis approved—"the least possible power adequate to the end proposed."

Petition denied.

DECISIONS OF THE COURT OF APPEALS

[No. 1745-R. October 5, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
PASTOR ROMBAWA y VILLAGRACIA, defendant and appellant.

CRIMINAL LAW; THEFT; EVIDENCE; PRESUMPTION; LACK OF PROOF THAT CRIME HAS BEEN COMMITTED.—While possession of stolen property or the taking of lost property may lead to a presumption that theft has been committed by the possessor, it is an indispensable requisite that it should be proved beyond reasonable doubt that there has been an unlawful taking or that the property has been lost. No such evidence being present, it can not be said that any theft was committed or, consequently that the accused is guilty of any such crime.

APPEAL from a judgment of the Court of First Instance of Manila. Barrios, J.

The facts are stated in the opinion of the court.

Mariano M. de Joya for appellant.

Assistant Solicitor General Barcelona and *Solicitor Villamor* for appellee.

REYES, J. B. L., J.:

The appellant Pastor Rombawa y Villagracia appeals from a decision of the Court of First Instance of Manila convicting him of simple theft and sentencing him to an indeterminate penalty of from 20 days of *arresto menor* to 6 months and 1 day of *prisión correccional*, with the accessory penalties of the law, and to pay the costs.

The evidence for the prosecution is to the effect that the appellant, an employee of the Engineering Island Shipyard, while in the act of leaving the premises in the evening of February 18, 1947, was found in possession of a $\frac{1}{4}$ horsepower electric motor or generator (Exhibit A) inside his "fatigue" coat. He was arrested, and upon investigation, claimed that the motor belonged to a friend of his by the name of Jacinto Pajarillo, and that appellant brought the motor inside the premises of the shipyard for the purpose of testing the same. However, according to the investigator of the 670 Medium Depot, Damaso S. Ona, Jacinto Pajarillo denied knowledge of the existence of the motor.

It was proved for the defense, by the testimony of the superintendent of the electrical battery shop of the Engineering Island Shipyard where appellant worked, the investigation made at the request of the Criminal Investigation Department in connection with the case, revealed that no motor was missing in the shop, although the witness could not say the same as to the supply section, for he had no supervisory control over it.

The Solicitor General, after reviewing the evidence, recommends the acquittal of the appellant in view of the absence of any proof to the effect that a crime had been committed. After thoroughly considering the evidence, we agree with this recommendation. There is positive evidence that the motor did not come from the electrical battery shop where the appellant was working, since the superintendent failed to notice that any such motor was missing notwithstanding the investigation done at the request of the police, and which must have been thorough in view of the arrest of the appellant. Nor has the prosecution established that the appellant had any access to the electrical supply section or that said department, at the time of the arrest, had any motors or generators of the kind found on appellant's person.

No competent evidence exists to refute the contention of appellant that he brought the motor with him into the shipyard's electrical shop for the purpose of testing the same. While the appellant claimed that it was delivered to him by Jacinto Pajarillo, the latter was not called by the prosecution to testify to the contrary. Pajarillo's statement to investigator, Ona, not having been made in the presence of the appellant, could not be competent against the latter. Even granting that the motor had not come from Pajarillo, such circumstance could only show that the appellant did not state the truth as to the origin of the motor, but did not in any way establish that the motor was property of the U. S. Army or that it had been unlawfully taken by the appellant.

While possession of stolen property or the taking of lost property may lead to a presumption that theft has been committed by the possessor, it is an indispensable requisite that it should be proved beyond reasonable doubt that there has been an unlawful taking or that the property has been lost. No such evidence being present, we can not say that any theft was committed, or consequently, that the appellant was guilty of any such crime.

In consonance with the recommendation of the Solicitor General, the appellant herein is *acquitted*, and the case dismissed with costs *de oficio*.

Gutiérrez David and Borromeo, JJ., concur.

Judgment reversed and appellant is acquitted.

[No. 1923-R. October 6, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
CRISPIN RAMOS Y UGARTE, defendant and appellant

1. CRIMINAL LAW; SIMPLE THEFT; EVIDENCE; POLICEMAN, COMPARATIVE WRIGHT OF TESTIMONY OF.—As between a clear, direct and positive testimony of an eyewitness on the fact which is the very subject of inquiry and the purely negative tes-

timony of the accused the former must prevail, especially when, as in the instant case, said witness was a disinterested one and, what is more a peace officer. (U. S. *vs.* Bueno, 41 Phil., 447; *People vs.* Tismo, CA-G.R. No. 2097; *People vs.* Ilanan, CA-G.R. No. 43818; *People vs.* Sope and Cruz, S.C.-G.R. No. L-16, January 31, 1946.)

2. ID.; ID.; OWNERSHIP OF STOLEN GOODS IMMATERIAL; PROOF THAT THEY WERE "PERSONAL PROPERTY OF ANOTHER" SUFFICIENT; CASE AT BAR.—Although there is no proof showing as to who was the particular owner of the T-shirts in question, since it was conclusively shown that the said shirts were "personal property of another," which were then under the custody of the SS *Warner* or Manila Terminal Company and the accused having taken them from the possession of the latter, without its knowledge and consent and for the purpose of gain, as in the instant case, is guilty of theft, although the said ship or company was not the true owner and did not appear at the trial as owner thereof. (25 Cyc., 89-90, quoted and adopted by the Supreme Court in the case of U. S. *vs.* Gumarang and Gumarang, 27 Phil., 1, 5.)
3. ID.; ID.; MERE CIRCUMSTANCE OF BEING A LABORER AT THE PLACE WHERE OFFENSE WAS COMMITTED DOES NOT QUALIFY OFFENSE AS "QUALIFIED THEFT"; CASE AT BAR.—The crime committed in the instant case was simple and not qualified theft. The mere circumstance that the accused was at the time of the commission of the offense a laborer of the Luzon Stevedoring Company does not bring the case within the purview of article 310 of the Revised Penal Code which treats of the crime of "qualified theft."

APPEAL from a judgment of the Court of First Instance of Manila. Rodas, J.

The facts are stated in the opinion of the court.

Crispin Ramos for appellant.

Assistant Solicitor General Barcelona and *Acting Solicitor Consing* for appellee.

DE LEON, J.:

Convicted by the Court of First Instance of Manila, and sentenced to suffer two (2) months and one (1) day of *arresto mayor* and to pay the the costs, defendant and appellant, *Crispin Ramos*, now appeals to this court, contending that:

I

"The trial court erred in convicting the defendant and appellant for the crime with which he was charged in the information solely on the lone, uncorroborated testimony of *Patricinio Artuz*, a member of the Manila Harbor Police;

II

"The trial court erred in convicting the defendant and appellant for the crime with which he was charged in the information even when the owner of the shirts in question is not known and nobody appears to claim them as owner;

III

"The trial court erred in admitting Exhibits A, A-1 to A-4 for the prosecution, inspite of the objection of counsel for the defense, when no owner identify them as his; and

IV

"The trial court erred in finding that the offense charged in the information is one committed with grave abuse of confidence merely because the defendant and appellant is a laborer of the Luzon Stevedoring Company."

On the night of January 21, 1947 at 9 o'clock, when appellant, a laborer of the Luzon Stevedoring Company, was going out of the shed of Pier 9, Port Area, City of Manila, he was accosted by Patrolman Patrocinio Artuz, a member of the Manila Harbor Police on patrol at that time at said pier. Noting something suspicious, said police officer searched appellant and effectively found concealed in the latter's person five T-shirts which were presented at the trial as Exhibits A, A-1 to A-4, of the estimated value of ₱15. On each leg of the appellant, a shirt was tied and the remaining three shirts were also tied around his waist. Asked where he got the said articles, appellant admitted he got them from the steamer *Warner* at that time docked at said pier. Appellant's admission was then put in writing (Exhibit B), but when asked to sign the same he refused to do so. The finding of the articles in question was then reported by said arresting officer to the master of the ss. *Warner* and a note giving the same information was sent to the Manila Terminal Company, but, for reason not disclosed in the record, neither the master of the ship nor the Manila Terminal Company took any action on the matter.

The defendant and appellant, testifying as a sole witness in his behalf, denied having taken from the ss. *Warner*, the T-shirts in question and denied further that witness Artuz had found them in his possession. He testified that while he was coming down the gangplank of the ss. *Warner*, he saw the said articles on the ground, although, on cross examination, he said that when he got down the gangplank of said pier, he saw policeman Artuz holding the said shirts, going around the more than twenty persons in the place, asking who of them was owner thereof, and because he (appellant) told said officer that he did not know as he had just come down from the ship, he was arrested.

While the case for the prosecution rests solely upon the testimony of harbor police Artuz, the trial court, however, gave to it full credence, and completely rejected the appellant's version. In doing so, the trial court has, in our opinion correctly and properly weighed the evidence and hence, His Honor's finding is fully justified. Policeman Artuz never knew the appellant before the incident in question. There is not even the slightest insinuation in the record that said police officer had any motive whatsoever to distort the facts simply to prejudice appellant. It is therefore proper to hold that said officer was only complying with his official duties when he arrested the accused,

filed charges against him and testified in the manner he did. As between Artuz' clear, direct and positive testimony on the fact which is the very subject of inquiry and the purely negative testimony of the appellant, the former must prevail. (U. S. *vs.* Bueno, 41 Phil., 447.) And this is more so, when, as in the instant case, said eye-witness was a disinterested one and, what is more, a peace officer.

"In the absence of any special reason discrediting the veracity of a witness who is a peace officer, his testimony has more weight than that of the appellant." (People *vs.* Tismo, CA-G.R. No. 2097.)

"Testimony of disinterested witnesses, especially police officers, in the absence of any showing as to motive which would impel them to distort the truth, although contradictory in some details, must be considered and given full credit as a whole; and finding of the trial court as to their credibility as a rule will be sustained by the appellate court. * * *; U. S. *vs.* Claro, 32 Phil., 413." (People *vs.* Ilanan, CA-G.R. No. 43818);

"* * * It has been repeatedly held by this court that the testimony of a single witness which satisfies the court in a given case is sufficient to convict. * * *" (People *vs.* Sope and Cruz, S.C.-G.R. No. L-16, January 31, 1946.)

Appellant further contends that inasmuch as, at the trial, nobody appeared as owner of, nor claimed for, the shirts in question, he could not be held guilty of theft. Obviously, this contention is untenable. True indeed that there is no proof showing as to who was the particular owner of the T-shirts in question. But it is equally true, as the record conclusively shows, that the appellant took the said shirts from the piles of cargoes on deck of the ss. *Warner* and then carefully and painstakingly concealed the same in his person and that neither on the occasion of his arrest, when said articles were found in his possession nor at the trial did he make any claim whatsoever that he owned the same. The conclusion is inevitable that the said T-shirts were "personal property of another," which were then under the custody of the ss. *Warner* or Manila Terminal Company and any one who had taken them from the possession of the latter, without its knowledge and consent and for the purpose of gain, as in the instant case, is guilty of theft, although the said ship or company was not true owner and did not appear at the trial as owner thereof.

"The actual condition of the legal title is immaterial to the thief; so far as he is concerned, one may be taken as the owner who was in peaceable possession of it, and whose possession was unlawfully disturbed by the taking. The possession of the goods from whom the thief took them may therefore properly be described as owner in the indictment. The possession must be actual; right of possession alone will not suffice. Nor a general direction and control, not amounting to a legal possession. The goods need not be in the actual manual possession of the person described as the owner at the moment of the taking; it is enough that he was legally the possessor. Upon this principle the property of goods stolen may be laid in a bailee from whom they were taken, as for instance in a

common carrier, an innkeeper, a pledgee, a receiver, a hirer or borrower, a cestui que trust, one in possession under a contract for purchase, a washerwoman who has the goods to wash, or a coachmaker who has a coach to repair, or a lienor, a manufacturer who is performing work on the materials of another, a cashier of a bank, or a constable who has attached or taken the goods in execution." (25 Cyc., 89-90, quoted and adopted by the Supreme Court in the case of *United States vs. Gumarang and Gumarang*, 27 Phil., 1, 5.)

With respect to the third assignment of error, we are of the opinion that Exhibits A, A-1 to A-4 were properly admitted by the trial court as part of the testimony of witness Artuz. However, we find to be well founded the last contention of the appellant that the crime committed was simple and not qualified theft. The mere circumstance that the appellant was at the time of the commission of the offense a laborer of the Luzon Stevedoring Company does not bring the case within the purview of article 310 of the Revised Penal Code. In *People vs. Celis*, the Supreme Court hold:

"La mera circunstancia de que el acusado trabajara como obrero en el lugar donde se comatio el hurto no puede, a nuestro juicio haber creado aquella relación de confianza e intemidad domestica que, según la ley, determina el delito de hurto qualificado. E. U. *contra Claraval*, 31 Jur. Fil., 685; *Pueblo contra Kee Song*, 63 Jur. Fil., 394." (B.C.-G.R. No. L-132, March 28, 1944.)

However, the penalty of two months and one day of *arresto mayor* imposed by the trial court falls within the legal range of the penalty provided in article 309 (5) of the Revised Penal Code for the crime of simple theft defined under article 308 of said Code, and consequently the same must stand.

Wherefore, and with the modification only as to the nature of the offense as above indicated, the judgment appealed from is hereby affirmed with costs against the appellant. It is so ordered.

Concepcion and Dizon, JJ., concur.

Judgment modified.

[No. 1721-R. October 7, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
EMILIO NERONA *alias* EMIL, defendant and appellant

CRIMINAL LAW; GRAVE THREATS; THREAT MADE IT WRITING; PENALTY.—Under the facts of the case, the appellant is guilty beyond reasonable doubt of the crime of grave threats as defined and penalized by article 282 of the Revised Penal Code. It being obvious that the appellant did not attain the purpose for which he wrote the letter in question the penalty lower by two degrees than that prescribed by the law for the crime he threatened to commit—which is the crime of murder punishable by *reclusión temporal* in its maximum period to death—shall be imposed, with the qualification that

the threat having been made in writing said penalty should be imposed in its maximum period (par. 1, art. 282, Revised Penal Code).

APPEAL from a judgment of the Court of First Instance of Cavite. Alfonso, J.

The facts are stated in the opinion of the court.

Cristobal Z. Alejandro for appellant.

Assistant Solicitor General Rosal and *Solicitor Avanceña* for appellee.

DIZON, J.:

Charged with the crime of grave threats in the Court of First Instance of Cavite, Emilio Nerona *alias* Emil was tried, found guilty thereof and sentenced by said court as follows:

"Por tanto, por la presente, se dicta sentencia, imponiendo al acusado las siguientes penas:

"1.^a La principal indeterminada de tres (3) meses de arresto mayor, como pena mínima, y la de tres (3) años de prisión correccional como pena máxima, con las accesorias de la ley correspondientes.

"2.^a La caución en cuya virtud el acusado presentará dos fiadores solventes que suscribirán una fianza en la cantidad de P500, en la que dichos fiadores se obligarán a responder de que Emilio Nerona no ofenderá a Ana Bennet ni a ningún miembro de su familia, y que la fianza quedará confiscada y ejecutada en caso contrario. La obligación que contraigan los fiadores en virtud de la fianza quedará *ipso facto* extinguida al transcurso de tres (3) años, a contar desde que quede firme la presente decisión. Pero si el acusado dejara de prestar la fianza y ofendiere de nuevo a Ana Bennet o a cualquier miembro de su familia, el acusado sufrirá la pena de destierro prevista en los Artículos 35 y 284 del Código Penal Revisado, consistiendo el destierro en que por espacio de un (1) año a contar desde que el acusado haya cometido la nueva ofensa, el mismo no podrá entrar dentro de la Ciudad de Cavite, a la distancia de veinticinco (25) kilómetros a la redonda.

"3.^a El acusado pagará las costas del juicio."

The appellant now contends that the lower court committed the following errors:

I

"The lower court erred in not holding that the root-cause of the case at bar was the ardent love full of passion of Ana Bennet toward the appellant.

II

"The court erred in not finding that Exhibit A was made and sent as a joke by the appellant to Ana Bennet at her request through a messenger Ines Vda. de San Agustin.

III

"The lower court erred in finding the appellant guilty of the crime of grave threat instead of light threat."

After a careful review of the evidence for the prosecution and the defense the Court finds the following to have been established conclusively:

In the year 1946 Ana Bennet Vda. de Fernando resided in the City of Cavite while the appellant—a driver for an Hembrador Royal Trans. Co. bus plying between Cavite and Manila—lived with his common-law wife and a child in Imus, Cavite. He and the offended party became acquainted sometime in July of that year, and since then he courted her and visited her frequently at the sari-sari store of her family on P. Burgos Street, in the aforesaid city. The offended party, however, rejected his suit, disregarded and burned his letters and requested him to stop visiting her and following her wherever she went. This made him more determined still until finally, in a moment of despair, he threatened to kidnap or kill her if she did not allow him to walk with her or if she did not talk to him and treat him well. This struck fear into her heart, for which reason on February 10, 1947 she moved to and sought protection in the house of her first cousin, Atty. Heraclito Diwa, an agent of the NBI, situated at Cabuco Street of the same city. As a result of his frantic efforts to find out where the offended party had gone the appellant discovered her whereabouts, early in March of that year. On the 7th of said month he went to see Ines General Vda. de San Agustin, whom he knew to be a friend of the Bennet family, and asked her to deliver the letter Exhibit A to the offended party. In compliance with such request Mrs. San Agustin delivered the letter to the offended party, the contents of which, as translated into Spanish are as follows:

“Ana querida:

“Quizá sabes ya el motivo porque te dirijo esta carta. Pero, antes que todo, te envío mis afectuosos recuerdos y efusivos besos a tí, mi querida. Si fuera posible, contestame esta carta, no te sacrifiques en esconderte, pues yo sé que estás allí en la casa de Tía Ata, querida. Mi vida está expuesta por tí, por eso que dentro de tres días a contar desde hoy, empuñate en salir de esa casa, porque si no lo hicieras así, no te arrepientas, pues dentro de tres días acabaré con tus padres y tus hermanos, querida. Mis sacrificios por buscarte han llegado al colmo, por eso que antes de que yo me muera de pena, si no sales de esa casa, mataré a toda la parentela de tus padres, como también a tu cuñado y hermanos.

“Hasta aquí no más, y esperaré tu contestación.”

As was to be expected, the fear of the offended party mounted. She showed the letter immediately to her cousin and other members of the family, and on the same day the matter was reported to the chief of police of the City of Cavite.

The three errors alleged to have been committed by the trial court raising but the question of insufficiency of the evidence to justify the appealed judgment we shall, for the sake of convenience, consider them together.

Upon the question of whether, as contended by the defense, the appellant and the offended party were para-

mours to the extent that they had lived together as husband and wife in two different places, we find the evidence of the defense to be unworthy of belief. The appellant claims that they lived as husband and wife from July, 1946 until December of the same year at the house of the Bennet family located at the corner of Barlan and Padre Burgos Streets, City of Cavite, where her mother, her brother and sister, Henry and Sally, and the second husband of her mother also lived, and yet he likewise claims that no one of the members of her family ever knew of it. Explaining how this happened he testified that, by agreement with the offended party, he used to go to her house very late at night, they slept together and then early in the morning he woke up and left before any member of her family could discover his presence. This the offended party stubbornly denied on the witness stand. Indeed, no reasonable man would readily accept appellant's unusual claim considering the circumstances appearing of record. In the first place, it is quite hard to believe, if not next to impossible, that the illicit relations between the parties and their living as husband and wife in the house at the corner of Barlan and P. Burgos streets could have continued for six months without any member of the family of the offended party having discovered it one way or another. In the second place, if, as claimed by the defense, the offended party was madly in love with the appellant and had, in fact, given herself up completely to him, we cannot understand why she absconded from him and sought refuge and protection in the house of her first cousin, Attorney Diwa, in February, 1947; much less can we understand why upon receipt of the threatening letter Exhibit A she immediately reported the matter to her cousin and later to the proper authorities. Lastly, we find absolutely nothing in the record showing such lack of moral sense in the offended party as to justify the belief that she could have maintained illicit relations with the appellant under the circumstances described by the latter. As stated heretofore, this Court believes, as the evidence for the State shows, that appellant's suit did not find favor in the eyes of the offended party and that the latter had to abscond from him and seek protection in the house of Attorney Diwa because of the threats made by the appellant.

The defense claims that the appellant sent the letter Exhibit A "as a joke" and at the request of the offended party herself. This theory—by itself quite singular and hard to believe—is completely destroyed not only by the testimony of the offended party but principally by that of Ines General Vda. de San Agustin, who, according to the appellant, was the party who dictated him the letter Exhibit A (trans. p. 71). This witness testified that on

March 7, 1947 the appellant went to her house located at No. 10 Leon Street, Caridad, City of Cavite and asked her to deliver the letter Exhibit A to the offended party, which she agreed to do because, as a matter of fact, she knew her and was in friendly terms with the family; that she then went to the house of Attorney Diwa where she knew the offended party was living and delivered the letter Exhibit A to her; that after reading it in her presence the offended party immediately notified Attorney Diwa about the matter and later reported the case to the authorities by whom the offended party and Mrs. San Agustin were questioned. There is no doubt, therefore, in the mind of the Court that the letter Exhibit A was written by the appellant himself without dictation by Mrs. San Agustin and that it was only through his request that the latter delivered the letter aforesaid to the offended party. The letter could not have been intended as a mere joke because certainly it is no joke at all to tell a woman who is hiding from you that unless she left her hiding place you will kill her and all her relatives. Considering what at that time must have been the state of mind of the appellant who, because he was madly in love with the offended party, must have been greatly disturbed and pained, by the fact that the latter was absconding from him, we have no doubt but that he wrote the letter Exhibit A with the express intention of striking fear into her heart and of compelling her to leave her hiding place.

Upon all the foregoing we are of the opinion, and so hold, that the appellant is guilty beyond reasonable doubt of the crime of grave threats as defined and penalized by article 282 of the Revised Penal Code. It being obvious that the appellant did not attain the purpose for which he wrote the letter in question the penalty lower by two degrees than that prescribed by the law for the crime he threatened to commit—which in the present case is the crime of murder punishable by *reclusión temporal* in its maximum period to death—shall be imposed, with the qualification that the threat having been made in writing said penalty should be imposed in its maximum period (paragraph 1 article 282 of the Revised Penal Code). The corresponding penalty, therefore, is *prisión correccional* in its maximum degree to *prisión mayor* in its medium degree, that is, from four (4) years, two (2) months and one (1) day of *prisión correccional* to ten (10) years of *prisión mayor* and according to law the same must be imposed in its maximum degree because the threat was made in writing. For the reasons stated in the brief of the Solicitor General we agree that the appellant is not entitled to the mitigating circumstance of passion and obfuscation (U. S. *vs. Ricks*, 14 Phil., 217). Applying the indeterminate sentence law, as amended, the appellant, therefore, should

have been sentenced, as he is hereby sentenced, to an indeterminate penalty of not less than one (1) year of *prisión correccional* nor more than six (6) years and one (1) day of *prisión mayor*. Likewise, pursuant to the provisions of article 284 of the Revised Penal Code the appellant was rightly sentenced to give bail not to molest the offended party in the future but it should be understood that the penalty of *destierro* imposed upon the appellant shall be suffered by him only "if he shall fail to give said bail." The appellant shall pay the costs.

As above modified the appealed judgment is affirmed.

Concepcion and De Leon, JJ., concur.

Judgment modified.

RESOLUTION

October 14, 1948

DIZON, J.:

Whereas, a clerical mistake appears in the dispositive part of the judgment of this Court promulgated on October 7, 1948 in that the maximum penalty imposed on the appellant appears to be not more than six (6) years and one (1) day of *prisión mayor* instead of being within the range of the medium degree of the impossible penalty, namely, the maximum of *prisión correccional* in its maximum period to *prisión mayor* in its medium period;

Now, therefore, the aforesaid judgment is hereby amended in the sense that the penalty imposed upon the appellant should be an indeterminate penalty of not less than one (1) year of *prisión correccional* nor more than eight (8) years, eight (8) months and one (1) day of *prisión mayor*. In all other respects the aforesaid judgment is maintained.

Concepcion and De Leon, JJ., concur.

Judgment amended.

[No. 2346-R. October 8, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. LEOPOLDO DIAZ and RIZALINO MARQUEZ, defendants.
RIZALINO MARQUEZ, defendant and appellant.

1. CRIMINAL LAW; HOMICIDE; EVIDENCE; WHERE EVIDENCE FOR THE PROSECUTION IS WANTING, COURT HAS TO CONSIDER EVIDENCE FOR THE DEFENSE AS TO THE KILLING.—When there is no evidence for the prosecution as to how the killing took place, the court is bound to consider the evidence presented by the defense in this respect in so far as it is consistent with the other evidence and circumstances attendant upon the case.
2. ID.; ID.; SELF-DEFENSE; UNLAWFUL AGGRESSION; NATURE OF AGGRESSION IN ORDER TO JUSTIFY SELF-DEFENSE.—In order that the exonerating circumstance of self-defense may be present, it is necessary that there should have been a sudden and unexpected attack on the part of the deceased.

3. ID.; ID.; ID.; ITS DURATION IN RELATION TO UNLAWFUL AGGRESSION; CASE AT BAR.—There could be no self-defense when there was no unlawful aggression, and even granting that there had been, self-defense should last as long as the unlawful aggression, and as soon as the deceased turned his back on the accused to find a refuge up in the house the unlawful aggression ceased for there was no longer any danger of further attack.

APPEAL from a judgment of the Court of First Instance of Capiz. Hernandez, J.

The facts are stated in the opinion of the court.

Reynaldo J. Guirnela for appellant.

Assistant Solicitor General Kapunan, Jr. and *Solicitor Brillantes* for appellee.

RODAS, J.:

At about 8 o'clock in the evening of June 28, 1947, while Sgt. Marcelo Apolinario was inspecting his policemen in charge of patrolling barrio Maayon, Pontevedra, Capiz, Magdalena Bornales reported that her husband Guillermo Dogelio was stabbed to death by Rizalino Marquez in barrio Batabat. The sergeant, with his four policemen, repaired to the place where they found Dogelio lying dead about eight meters from the stairs of his house, in which they saw scattered stains of blood on the floor and on the stairs and two empty shells under the house and another inside. They found the door thrown to the floor. The policemen stayed in the place until early the next morning when the sergeant sent three of them to fetch Rizalino Marquez for investigation on the strength of the report of the deceased's wife to the effect that it was Rizalino who stabbed her husband to death.

Rizalino, upon being questioned by the policemen as to what took place the night previous, admitted having killed the deceased and at the same time surrendered the bolo, Exhibit E, stating that it was the one he used in killing Guillermo Dogelio. Rizalino was immediately submitted to an investigation which resulted in the filing of a complaint for murder against him alone.

On that very day, June 29, the sergeant of police examined the following witnesses; Magdalena Bornales and Emiliano Demandante, as the only persons who actually saw the killing. Said witnesses testified that while Leopoldo Diaz, Rizalino Marquez and Guillermo Dogelio were drinking *tuba* at a place near the house of Filomeno Comorro, where Guillermo was living as a tenant of the latter, a trouble arose and Isang (Rizalino Marquez) grabbed hold of Guillermo Dogelio for the purpose of throwing him down to the ground, but the latter succeeded in escaping and ran up the house and closed the door immediately behind him by putting on the bar. Rizalino, however, followed him and throw the door open by breaking

it down and then stabbed Guillermo. While the two were fighting Leopoldo Diaz who was then under the house fired three shots at Guillermo who, as a result of the stabbing and shooting, fell down dead. Magdalena upon seeing her husband fall left the house with her two children and went to barrio Maayon to report the matter to the police.

In view of the testimony of Magdalena Bornales and Emiliano Demandante, a new complaint was filed by the chief of police on June 30, 1947, charging Leopoldo Diaz and Rizalino Marquez with murder. Upon the arrest of the accused, the justice of the peace, on motion of their attorneys, called the witnesses for the prosecution and conducted a sort of a new preliminary investigation during which Magdalena Bornales and Emiliano Demandante, contrary to their affidavits subscribed and sworn to before the justice of the peace, testified that their former statements to the effect that Leopoldo Diaz fired at Guillermo Dogelio while the latter and Rizalino Marquez were bololing each other inside the house was not true, and, explaining the reason for the change of their statements, declared that they were requested by the brothers of the deceased to testify in the manner they did at the investigation conducted by the justice of the peace and taken down in their respective affidavits subscribed and sworn to before the justice of the peace of Pontevedra.

At the trial of the case before the Court of First Instance of Capiz, the prosecution put on the stand but one eyewitness, Leopoldo Dogelio, brother of the deceased, who testified that during the whole day of June 28, 1947, he had been helping his brother in plowing, and as the work was not completed, he was asked by the latter to stay until the next day; that at about 8 o'clock in the evening of said day, the accused passed by the house and were invited by the deceased to have a drink. While they were engaged in a drinking spree and making a lot of noise the accused asked for *sumsuman*, (a sort of viand used in drinking *tuba*) and as his brother failed to give them "sumsuman," said accused told him that they would do him some harm. Upon hearing the threats, the witness went to the window and had a chance to see Rizalino grab the deceased by the neck with the intention of throwing him down, but the deceased succeeded in running away and went up the house, leaving the two accused down standing side by side. After passing the door the deceased closed it by putting on the bar, but Leopoldo Diaz and Rizalino Marquez forced the door open until it fell down. Diaz fired his revolver at Guillermo Dogelio and Rizalino in turn boloed him while the witness was looking for a weapon to help his brother. Upon hearing the shots, however, the witness jumped down and hid himself behind a bamboo groove at a distance of about fifteen meters from the house.

While in his hiding place he heard his sister-in-law cry saying: "You have killed my husband," and saw her leave with her children. He also saw the accused looking for him and heard them say that they would kill him, and saw them likewise dragging his brother from the house to a distance of about 6 *brazas* or 8 meters. Fearing that he might be killed by the accused, he left his hiding place and went home.

This witness who pretends to have seen the killing and who was present during the investigation conducted by the sergeant and the chief of police of Pontevedra did not dare testify or inform the investigating officers that he was present at the scene of the crime and witnessed the commission thereof, alleging that he was afraid to be the subject of retaliation on the part of the accused, whom he knew to be criminals, should he testify for the prosecution.

The two accused in turn testifying in their own behalf stated that while on their way to Tula-tula where the accused Leopoldo Diaz had a fish pond and where they intended to fish and hunt birds, they passed by the house of Filomeno Comorro, brother-in-law of the accused Leopoldo Diaz, to borrow his shotgun and it was the deceased who met them and invited them to drink *tuba*; that while drinking in front of the stairs, Rizalino asked Guillermo where was Filomeno Comorro, to which the deceased answered thus: "I have already told you that he is not here. Are you a fool?", and then stopped and continued drinking. Then Leopoldo Diaz in turn asked Guillermo where was the shotgun of Filomeno, to which Guillermo answered: "It is not here; he did not leave it here; why do you need it when you have a shotgun yourself?" While thus conversing they obviously came to a heated discussion which caused Guillermo to go up the house, leaving the said two accused down; but all of a sudden Guillermo, while standing at the top of the stairs holding a revolver in his left hand and a bolo in the other, dealt a bolo blow on Rizalino who was then standing at the foot of the stairs with one of his feet resting on the first step, drinking his glass of *tuba*. Guillermo, bending forward, as if trying to reach Rizalino was getting ready to deal a second blow, but Rizalino upon receiving the first on the left side of the face, unsheathed his bolo, went up one more step and retaliated by boling Guillermo twice, one on the left chest and another on the left face. Then Rizalino pursued a passerby believing him to be a man, but as soon as he noticed that it was the wife of the deceased, he returned and took the revolver from Guillermo's hand, and cranked it, and it accidentally exploded and hit the deceased. Having noticed that Guillermo was dead, he carried the body down for the purpose of delivering it to the police and surrendering himself in Maayon, and when he could no longer resist the pain he

was feeling because of his wounds, he dropped the deceased at a distance of about 30 *brazas* from his house and went on to a river to wash said wounds and tried to proceed, until he stumbled down and accidentally dropped the pistol. He felt unconscious and the next thing he noticed was that two persons were carrying him by the shoulder and taking him to his house. Here he rested until the next morning when the policemen came and arrested him.

The only evidence for the prosecution consists of the testimony of Leopoldo Dogelio to whom the lower court gave no credit at all, and rightly. The glaring contradictions which he incurred and his silence during the investigation were sufficient grounds for not believing in his testimony. To this should be added, however, not only the failure of both Magdalena Bornales, and Emiliano Demandante to mention his presence at the scene of the crime but the assurance made by the former that the only witness who saw the killing besides herself was Emiliano Demandante. Had Leopoldo Dogelio really been at the scene of the crime, the widow at least should have seen him and mentioned his presence to the policemen when she reported the matter immediately after the killing or at the investigation conducted the next morning.

When there is no evidence for the prosecution as to how the killing took place, the court is bound to consider the evidence presented by the defense in this respect in so far as it is consistent with the other evidence and circumstances attendant upon the case. It is beyond question that there had been a quarrel between the accused and the deceased while they were drinking *tuba*. As to who provoked the quarrel and whether the deceased and Rizalino began boling each other right then and there is purely a matter of conjecture. It is a fact, however, that the deceased went up the house and closed the door behind him and that either Rizalino alone or both of the accused pushed the door open until it fell down. And that once inside the house, Rizalino stabbed the deceased first on the left breast and then on the left face. The contention of the defense that Rizalino and the deceased boloed each other while on the stairs, Rizalino at the foot and Guillermo at the top, is not only unbelievable but also physically impossible. The height of the stairs was over five feet, and even granting that Rizalino was on the second step going up, it was impossible for him to inflict a wound on Guillermo's face and left breast, unless the latter was in a bending position not less than twenty degrees. Had Guillermo, however, been in this position upon receiveing either of his two wounds, he should have fallen down, and it would have been impossible for him to again enter the *sala* even for the purpose alone of throwing himself down, for according to the doctor who conducted the post-mortem examination

of the deceased, the wound on the left breast was fatal and should have caused his death instantaneously. The presence of blood stains scattered on the floor of the house as well as of the falling down of the door indicate that said door was forced open while Guillermo was behind it to resist the onslaught and that immediately after the door fell down the fight ensued. Again the contention of the defense that the deceased was shot accidentally when lying on the floor face up, while Rizalino was cranking the revolver, is unbelievable if not impossible. Had this been their respective relative positions, the two bullets that hit the testicles of the deceased could not have found their exit wounds at the sacral region, which is a matter of several inches in an upward direction. The most natural direction of the bullets would be to pierce the testicles thru and thru. And so with the bullet that entered the abdomen of the deceased between the umbilicus and the synthesis; it would have just gone straight down inasmuch as Rizalino himself stated that the revolver was pointing straight down when it accidentally exploded while he was cranking it. From the direction followed by the bullets in penetrating the body of the deceased, it may be inferred that at least two of the three shots were discharged from down below while the deceased was inside the house fighting with Rizalino, as shown by the fact that two empty shells were found under the house and the third was fired at the deceased while lying down on the floor face upward, as proven by the fact that the third empty shell was found inside the house near the place where the deceased fell down after receiving the fatal and mortal wounds, which brought about his instantaneous death.

The defense alleged that the trial court erred in not taking into consideration the exonerating circumstance of self-defense in favor of the appellee Rizalino Marquez. Taking for granted that it was the deceased who first assaulted the accused Rizalino, by inflicting on him the wound on the left side of his face before going up the house, yet there would be no self-defense at all, for in order that this exonerating circumstance may be present, it is necessary that there should have been a sudden and unexpected attack on the part of the deceased. It is admitted that the fighting was preceded by a quarrel between the deceased and the accused, and that the deceased obviously went up the house to avoid the fight, as shown by the fact that immediately after reaching up, he closed the door behind him, which is an undeniable fact in this case. If the accused Rizalino followed the deceased up in the house and there stabbed him to death, as he did, rather than self-defense his act proves a clear intent to kill his foe who was then running away from him. There could be no self-defense when there was no unlawful aggression, and

even granting that there had been, self-defense should last as long as the unlawful aggression, and as soon as the deceased turned his back on the accused to find a refuge up in the house the unlawful aggression ceased for there was no longer any danger of further attack.

The accused stands charged with murder, but none of the qualifying circumstance of said crime has been established.

The killing took place as a result of a quarrel and the fact that the deceased was the first to infer injury on Rizalino with a bolo did not constitute an unlawful aggression, but a natural accident of the fight. It is admitted by Rizalino Marquez that he was the one who inflicted the wounds of the deceased herein above mentioned which caused his death, and not having done so in lawful self-defense, he is, therefore, guilty of the crime of simple homicide with the concurrence of the mitigating circumstance of being drunk at the time.

We, therefore, find the accused guilty of simple homicide which is necessarily involved in the charge of murder set forth in the information with the mitigating circumstance of being drunk at the time. Judgment of the lower court is hereby affirmed *in toto*, with costs against the appellant.

Jugo and De la Rosa, JJ., concur.

Judgment affirmed.

[No. 2171-R. October 11, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
SULFICIO BENERO, defendant and appellant

1. CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARMS; "ANIMUS POSSIDENDI, PROOF OF, ESSENTIAL.—It is essential for the conviction of an accused charged with illegal possession of firearms, that *animus possidendi* on his part be proven or reasonably inferred from the evidence produced.
2. CRIMINAL LAW AND PROCEDURE; PLEA OF GUILTY AS BASIS FOR CONVICTION; REQUISITES; CASE WHERE PLEA OF GUILTY CANNOT OVERCOME EVIDENCE FOR THE DEFENSE.—In order that a plea of guilty might be the basis for conviction, it is indispensable that the defendant shall admit, absolutely and unconditionally, his guilt and responsibility for the offense imputed to him (*U.S. vs. Dineros*, 18 Phil., 566), and it is the duty of the court to enter a *plea of not guilty* when the defendant "admits having committed the act charged against him, *but offers at the same time some excuse*" (*U.S. vs. Estavillo*, 9 Phil., 668; *U. S. vs. Grant et al.*, 18 Phil., 122). The plea of guilty made by the accused at the preliminary investigation before the justice of the peace is of no sequence in the case at bar, and, certainly, it cannot overcome the evidence produced in exculpation of the accused for the government did not know the existence of the firearms nor of their hiding place except through the voluntary report made by the accused that said arms were found and seized. Under the foregoing circumstances, the accused should be acquitted

APPEAL from a judgment of the Court of First Instance of Leyte. Victoriano, J.

The facts are stated in the opinion of the court.

Emanuel Pelaez for appellant.

Assistant Solicitor General Barcelona and *Acting Solicitor Consing* for appellee.

FELIX, J.:

Prosecuted in the Court of First Instance of Leyte and found therein guilty of illegal possession of firearms, in violation of section 878, in connection with section 2692 of the Revised Administrative Code, as finally amended by Republic Act No. 4, Sulpicio Benero was sentenced to suffer five years of imprisonment, with credit of one-half of the period of his preventive detention, and to pay the costs. From this decision the defendant perfected his appeal to us, and in this instance his counsel maintains that the lower court erred: (1) In not giving credence to the testimonial evidence presented by the defense; (2) in convicting the accused in the absence of *animus possidendi* on his part; (3) in convicting the accused, the crime not having been proven beyond reasonable doubt; and (4) in not taking into consideration the degree of education of the accused and the fact that this was the accused's first offense in imposing the penalty.

There is no much discussion about the facts of this case, which may be briefly abridged as follows: Early in the morning of June 28, 1947, at one o'clock, upon order of Lt. Daniel S. Galenzoga of the 2nd MP Command, Cpl. Alberto Porazo, Delfin Posadas and one member of the MP accompanied by the accused, proceeded to a vacant house in barrio Santa Ana, La Paz, Province of Leyte, to look for certain firearms which the accused had informed the MPs to have been keeping in said premises. On reaching the place two carbines (Exhibits A and B) were, according to the prosecution, found covered by mats in a corner of the house indicated by the accused, while according to the defense the firearms were taken from their hiding place under the trunk of a fallen tree.

Explaining the reason why he had these firearms in his possession, the defendant, who is an ordinary farm laborer, said that one Inocencio or Joven Refuerzo, a notorious person known in the community by his reputation of being the leader of a "gang", paid him a visit on the night of June 15, 1947, when he was alone in his house, and handing him over two carbines (Exhibits A and B), told him to keep them, making it plain that he would be coming back for the arms. The defendant did not want to have them in his custody, but cowed by the threats of Refuerzo and realizing his helplessness, had not other alternative than to accept and take charge of the custody

of the carbines, because the trust was sealed with threats not only against his own personal security but against the safety of his family as well. The defendant, of course, knew that the law was very severe on the persons possessing firearms without license, so he did not hide them in his house but under the trunk of a fallen tree, and kept the incident with Refuerzo as a secret and did not divulge the threats nor the hiding place of the arms to anyone except to his younger brother Antonio.

Some days passed and Refuerzo did not show up nor return to get back the arms, as he had announced to the defendant, who forgot all about the matter and went about his daily camp chores without lending a thought to the same, until June 27, 1947, when Lieutenant Galenzoga went with his men on patrol in search of persons suspected of sedition. Around one o'clock in the morning of that day, the MPs entered the house of appellant where he was found sleeping. Taken for investigation and remembering then the arms entrusted to his custody by Refuerzo, and the latter's failure to return to get them, appellant informed the lieutenant, who knew nothing about said arms, that he had them in his possession and custody. By appellant's own report, Lieutenant Galenzoga came to know of the existence of the carbines that he ordered his men to seize and for the possession of which appellant was prosecuted and stands now convicted by the lower court.

One week after the discovery of the arms, an information for illegal possession of firearms was filed against Sulpicio Benero, and upon arraignment before the justice of the peace of La Paz, he entered a plea of guilty. The case was then remanded to the Court of First Instance of Leyte and upon arraignment in this court the defendant pleaded not guilty.

"We hold it essential for the conviction of an accused charged with illegal possession of firearms, that *animus possidendi* on his part be proven or reasonably inferred from the evidence produced." In the case at bar, Lieutenant Galenzoga was not presented as a witness, and the only proof anent this point comes from the defense that established without contradiction that appellant "did not want and never intended to possess for himself the carbines in question." Reviewing the record we receive the impression that the fact that undoubtedly influenced the mind of the trial judge and predisposed him to convict the defendant was the latter's plea of guilty before the justice of the peace of La Paz, improperly considered as such and erroneously made to appear in the order remanding the case to the Court of First Instance (Exhibit C). There was no other evidence on record implying defendant's guilt.

At the hearing in the court below, appellant testified in his behalf and stated that if he pleaded guilty at the preliminary investigation before the justice of the peace of La Paz, it was because he was ill-treated by the MPs. We do not give much weight to this statement, but even so we cannot disregard what appears in exhibit of the defense, which is an affidavit of appellant Sulpicio Benero, subscribed and sworn to before the same justice of the peace of La Paz, from which we copy the following:

"Q. After the complaint had been read to you by Court and after you have been informed of the charges against you, you were asked by the Court as to what you had to say about those charges. You pleaded guilty as shown by your signature at the bottom of the complaint. The declarations of the witnesses for the Government Sgt. Vicente Petolo and Cpl. Alberto Porazo were read to you and on your understanding as interpreted to you by the Court you agreed to all what these witnesses stated in their affidavits. Is it not true?—A. True.

"Q. You have asked this Court that you be allowed to declare and state your defense and on your volition you declared on oath the following in answer to this question.—'What have you to say about these charges against you?'—A. If I am accused it is due to Domingo Cordero, because he came to my house on May 29, 1947 for the purpose of having me accompany him (to come) to the Poblacion of La Paz. I did not want to go but because of his threatening words and because of fear as he and his men were armed I went with them and his men and I came to the Poblacion of La Paz. Domingo Cordero did come with us. Only his men came and I could not come to town as I was made to remain in Cabagiangan by the armed men who were my companions.

"Q. *The charges against you now are not due to sedition but your possession of the two carbines without license?*—A. *If the two carbines came into my possession there is a man who gave them to me. The man is Joven Refuerzo who came from Burawen, and he gave them to me about the middle of June, 1947. These two carbines brought to this Court by Lieutenant Galenzoga are the same carbines given to me by Joven Refuerzo. I refused at first to receive these rifles but he told me to take them and keep them and if I loss them the lives of my parents will answer. I took them because I wanted to save the lives of my parents, especially because they live in the hills and get their support from there. So that when the MP asked me about these rifles I gave them to them as I am a civilian.*

"Q. Do you have more to say about this case against you?—A. No more."

Cross-examination by Lieutenant Galenzoga, MP:

"Q. You have just stated that these carbines were given to you by Joven Refuerzo, did this man Joven tell you that there is license for these arms?—A. No. He did not tell me.

"Q. Can you tell the reason why Joven Refuerzo gave you these arms?—A. *Because we were both men of Domingo Cordero.*

"Q. Did you know that Domingo Cordero who was your leader and master had surrendered his firearms to the Government?—A. Yes.

"Q. *Inasmuch as you have that knowledge, why did you not surrender these arms as your master had done with his arms?*—A. Be-

cause I was afraid of the threat on the lives of my parents made by Joven Refuerzo."

Questions by the Justice of the Peace:

"Q. Did you tell Domingo Cordero that Joven Refuerzo entrusted to you the two carbines?—A. I could not tell him because Domingo had already surrendered his arms when these arms were given to me.

"Q. Do you know that to have in possession of firearms without license is prohibited and punished by law?—A. Yes, I know.

"Q. And then why did you not tell the authorities of the Government about these prohibited arms?—A. Because I was afraid of the threat of Joven Refuerzo.

"Q. You have said here that Domingo Cordero was your and that of Joven Refuerzo's direct superior, why did you not tell him about these firearms left to you by Joven Refuerzo?—A. He was no longer in Burawen. He was already in Tacloban.

"Q. Why did you not go to Tacloban and tell him about the firearms in order to avoid responsibility?—A. Because I was afraid of Joven Refuerzo.

"Q. It is not a fact that whatever Domingo Cordero would say on these firearms Joven Refuerzo could not stop?—A. True. But Joven Refuerzo did not surrender. He escaped into the mountains.

"Q. Have you ever met Joven Refuerzo since he gave you the arms up to the time you were apprehended by the MP?—A. I have not met him, as I also went to the farm in the mountain to work on the farm.

"Q. Do you know the present whereabouts of Joven Refuerzo?—A. I do not know.

"Q. Do you have anything more to say?—A. Yes.

"Q. What is it?—A. If I had in my possession these carbines it is not only by my fear of Joven Refuerzo but also because I am ignorant. I have nothing more to say."

By this affidavit, "we find that Sulpicio Benereo acknowledged the possession of the carbines," but his statement of exculpation annuls the alleged plea of guilty made by him before the justice of the peace. Needless to say that in order that a plea of guilty might be the basis for conviction, it is indispensable that the defendant shall admit, absolutely and unconditionally, his guilt and responsibility for the offense imputed to him (*U.S. vs. Dineros*, 18 Phil., 566), and that it is the duty of the court to enter a *plea of not guilty* when the defendant "admits having committed the act charged against him, *but offers at the same time some excuse*" (*U.S. vs. Estavillo*, 9 Phil., 668; *U.S. vs. Grant et al.*, 18 Phil., 122).

We declare, therefore, that the plea of guilty made by appellant at the preliminary investigation before the justice of the peace of La Paz, is of no sequence in this case, and, certainly, it cannot overcome the evidence produced by the defense. The Government did not know the existence of said arms nor of their hiding places. It was through the voluntary report made by appellant that said arms were found and seized. The penalty provided for in Republic Act No. 4 is quite severe, and under the circumstances in this case, we do not feel justified in imposing it on the defendant.

Wherefore, considering that the evidence on record is insufficient to establish appellant's guilt beyond reasonable doubt, he is freely acquitted and the decision appealed from reversed, with costs *de officio*. The carbines Exhibits A and B surrendered by appellant are forfeited to the government. It is so ordered.

Torres and Endencia, JJ., concur.

Judgment reversed and defendant acquitted.

[No. 2215-R. October 12, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
ANGELA MARTIR and HILARIO MIDEZ, defendants. AN-
GELA MARTIR, defendant and appellant.

CRIMINAL LAW; ILLEGAL OCCUPATION OF PUBLIC FOREST LANDS OR CONSTRUCTION OF FISHPONDS; LAW NOT VIOLATED WHERE ACCUSED HOLDS PROPERTIES IN QUESTION IN "CUSTODIA LEGIS"; SECTION 39 FISH AND GAME ADMINISTRATIVE ORDER NO. 14 OF THE DEPARTMENT OF AGRICULTURE AND COMMERCE, IN CONNECTION WITH SECTION 83 OF ACT NO. 4003; CASE AT BAR.—The retention of possession of the fishponds in question by the accused notwithstanding the order of rejection of her petition for the renewal of permit to operate said fishponds by the Chief of the Division of Fisheries, does not constitute an illegal occupation of the fishponds as that contemplated under the provisions of section 39 of the Fish and Game Administrative Order No. 14 in connection with section 83 of Act No. 4003, inasmuch as the fishponds in question were under her care as administratrix of the estate of the deceased H. M., and as such it was her duty to remain in possession thereof and report about it to the court, and *without previous order of the probate court*, she could not give up such possession since the properties were then in *custodia legis*, under her responsibility.

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Cordova, J.

The facts are stated in the opinion of the court.

Abundio Z. Arrieta for appellant.

Assistant Solicitor General Kapunan, Jr. and Solicitor Brillantes for appellee.

ENDENCIA, J.:

This is a case originally initiated in the Justice of the Peace Court of Cadiz, Negros Occidental, against Angela Martir and Hilarion Midez for violation of section 39 of the Fish and Game Administrative Order No. 14 of the Department of Agriculture and Commerce, in connection with section 83 of Act No. 4003. The information filed in that court reads as follows:

"That during the period comprised between March 7, 1946 to March 7, 1947, the above named accused having no right to enter lots Nos. 28, 222 and 262 of the cadastral survey of Cadiz, did then and there, wilfully, unlawfully, and feloniously occupy and con-

struct dikes in the above-mentioned lots and thereafter wilfully, illegally and maliciously caught and gathered the fish found in said public land fraudulently in violation of order of rejection of the application of said Angela Martir regarding the same lots above-mentioned."

Upon arraignment, the accused pleaded not guilty. They were tried and after hearing found guilty of the crime charged and were sentenced each to pay a fine of ₱200 or to undergo subsidiary imprisonment of two (2) months and one (1) day in case of insolvency and to pay the costs. Thereafter, they appealed to the Court of First Instance, where, after the case was dockated, the provincial fiscal reproduced the information quoted above. After trial in said court, the accused Hilarion Midez was found innocent of the crime charged against him and was acquitted with the proportional costs *de officio*. The other accused, Angela Martir, was however found guilty of the violation of law mentioned above and sentenced to suffer imprisonment of three (3) months and to pay a fine of ₱200 with subsidiary imprisonment, plus the proportional costs. Not being satisfied with this decision, Angela Martir appealed to this Court.

Section 39 of the Fish and Game Administrative Order No. 14, alleged to have been violated by the appellant, provides as follows:

"39. Illegal occupation of public forest lands or construction of fish-ponds.—Any person, who shall violate any of the provisions of this Order by occupation or construction of fish-pond within tidal or mangrove swamp lands, ponds and streams within public forest lands, proclaimed timber lands, or established forest reserves, shall be liable to prosecution and upon conviction shall suffer the penalty provided in section 83 of Act No. 4003, which is a fine of not more than ₱200 or imprisonment for not more than six months, or both, in the discretion of the court. If the violation includes any construction constituting an encroachment upon waters in violation of public rights, the removal thereof shall be effected by or under the order and direction of the Director or of the Secretary of Agriculture and Commerce."

The lower court convicted the herein appellant on the theory that she had disobeyed—and thus incurred in the penal sanctions provided for in the aforesaid section 39 of the Fish and Game Administrative Order No. 14—an order issued by the Chief of the Division of Fisheries of the Department of Agriculture and Commerce, prohibiting her to occupy two tracts of public land containing an area of 59.82 hectares and 34.97 hectares, respectively, in the *sitios* of San Antonio and Banquerohan of the municipality of Cadiz, Province of Negros Occidental, which order is as follows:

"ORDER: REJECTION OF APPLICATION

"From the record of this case it appears that:

"This application was filed on February 4, 1946, for a tract of public land in the *sitios* of San Antonio and Banquerohan, barrio

of———, municipality of Cadiz, Province of Occidental Negros, containing an area of 59.82 hectares (Fp. A. No. 459) and 34.97 hectares (Fp. A. No. 460).

"It further appears that:

"The area applied for was granted to a previous applicant, Pedro Trinidad, to whom Hermogenes Martir, heir of Hilarion Martir, transferred his rights and interests over the area in question.

"Wherefore, this application, submitted in accordance with section 63 of Act No. 4003, known as the Fisheries Act, should be, as hereby it is, rejected.

"The area should not be illegally occupied under penalty of law, as provided in section 39 of F. G. A. Order No. 14, quoted at the bottom hereof.

"So ordered.

"Manila, Philippines, March 7, 1946.

"(Sgd.) D. V. VILLADOLID

"Chief, Division of Fisheries"

The facts which gave rise to the present case are well expounded in appellant's brief. They are as follows: Prior to 1940, public lands known as lots Nos. 28, 222 and 262 of the cadastre of Cadiz were granted to the government of the Philippines to Hilarion Martir as fishery concession. Immediately after the grant of the concession, Hilarion Martir converted said lots into fishponds and introduced thereon permanent improvements in the form of dikes and embankments, the approximate value of which is about P30,000. Before his death, Hilarion Martir executed a will, paragraph 7 of which as follows:

"Séptimo: Todos mis terrenos en Abuanan, Cabanganan, Talao, Buhaybuhay y Cádiz y el vivero de peces (Ponong) en Cádiz doy a Hermógenes Martir."

The will was presented to and allowed by the Court of First Instance of Negros Occidental, and, on appeal, the order of the court probating and allowing said will was confirmed by the Supreme Court on June 21, 1940. In the testate estate proceedings of the deceased Hilarion Martir, his children Hermogenes and Angela Martir were appointed joint administrator of his estate including the fisheries in question, known as lots Nos. 28, 222 and 262 of the Cadiz cadastre, which were all placed under *custodia legis*, and remained so up to the trial of the case.

On May 29, 1940, Hermogenes Martir wrote a letter to the Chief of the Fish and Game Administration asking permission to sell his rights and interests over the fishponds but such permission does not seem to have been granted, and yet on October 1, 1940, he sold his rights and interest, as heir of the deceased Hilarion Martir, over the said fishponds in favor of one Pedro Trinidad for the sum of P1,000 with right to repurchase the same within two years. Notwithstanding this sale, the fishponds continued and remained under the administration of the legal representative of the estate appointed by the court in the testamentary proceedings; namely, the accused Angela

Martir and her brother Hermogenes Martir. In fact on April 16, 1941, Mr. D. V. Villadolid, Chief of the Division of Fisheries of the Department of Agriculture and Commerce, wrote to the Hilado and Hilado offices of Manila to the effect that the fishponds' permit over said properties will be issued to the estate of Hilarion Martir, as it was actually done (Exhibit 1). Pedro Trinidad never acquired possession of the fishponds in question.

After the outbreak of the war in 1941, Hermogenes Martir evacuated to the province of Capiz and in the year 1943, he was killed there by the Japanese Imperial Forces, so he was unable to exercise the right of repurchase provided for in his contract with Pedro Trinidad over the fishponds in question. During the enemy occupation of the island of Negros, the accused herein, as administratrix of the estate of Hilarion Martir, was in the continuous possession of said fishponds. After liberation, the appellant was notified by the Municipal Treasurer of Cadiz, in a letter dated October 30, 1945, of the communication received from the District Fishery Officer of the Iloilo Station, requiring her to renew the permit granted to the estate for the operation of said fishponds, as well as to make the corresponding cash bond deposit. Thereupon, on December 20, 1945, Mr. Celestino Leaño, District Fishery Officer of Iloilo, wrote directly to the accused advising her to call at the office and make a deposit of P2,660. Accordingly, the accused sent her husband Antonio Guanson on December 29, 1945, to the Iloilo Office of the Division of Fishery and the latter filed the corresponding renewal application of the fishponds in the name of his wife and deposited with Mr. Leaño a manager's check in the amount of P1,000 to cover the rental in arrears. This application and deposit were not however immediately sent to the Chief of the Division of Fisheries of the Department of Agriculture and Commerce in Manila, and while the same were pending transmittal Pedro Trinidad filed with said Division of Fisheries an application for a permit over said fishponds on the basis of the deed of the conditional sale dated October 1, 1940, executed by Hermogenes Martir. On January 10, 1945, Mr. D. V. Villadolid, Chief of the Division of Fisheries in the Department of Agriculture and Commerce, issued in favor of Pedro Trinidad Fishpond Permit No. F-89-B (Exhibit B), without first inquiring from its branch office in Iloilo about the fishponds in question, in spite of the fact that it was formerly part of an estate in *custodia legis* and supposedly occupied by a prior permittee. Thus, when the application of the appellant, as administratrix of the estate of the late Hilarion Martir, reached the main office in Manila, the corresponding permit in favor of Mr. Trinidad had already been issued, and said office had no

other alternative but to reject appellant's application and return her deposit in the amount of ₱1,000 (Exhibits 7 and 8).

On March 23, 1946, Atty. Juan S. Aritao, representing the accused as administratrix of the estate, wrote a letter to Mr. D. V. Villadolid, Chief of the Division of Fisheries, Manila, protesting against the approval of the permit in favor of Pedro Trinidad and at the same time requesting for a reconsideration of the order of said officer of March 7, 1946, rejecting the application of the appellant (Exhibit 9). Said protest and petition for reconsideration were never answered by the Chief of the Division of Fisheries, and on July 6, 1946, the same Attorney Aritao again wrote to said officer reiterating his request for reconsideration of the order rejecting the application of the appellant (Exhibit 10). Again, said letter of Attorney Aritao did not merit the attention of the Chief of the Division of Fisheries who did not even have the courtesy to send him a reply. Attorney Aritao and the appellant waited in vain for an action on the request for reconsideration, and for this reason, up to the time of the filing of this case, they have not been able to appeal the case to the Secretary of Agriculture and Commerce. In the meantime, the appellant continued in the possession of the properties in question, and on March 8, 1947, criminal proceedings were instituted against her before the justice of the peace Court of Cadiz, at the instance of Pedro Trinidad, for violation of section 39 of the Fish and Game Administrative Order No. 14, in connection with section 83 of Act No. 4003.

The facts above stated are not disputed by the prosecution. In fact in the Government's brief, the counter-statement of facts is completely similar to what has been expounded above.

Appellant contends that under the facts of the case, the court erred in finding her guilty beyond reasonable doubt of the violation of section 39 of the Fish and Game Administrative Order No. 14, in connection with section 83 of Act No. 4003, and in sentencing her to suffer three months of imprisonment and to pay a fine of ₱200 with subsidiary imprisonment in case of insolvency. The Solicitor General concurs in this contention, and recommends her acquittal, thus the only question for us to decide is whether the appellant should be really acquitted in consonance with her petition concurred in by the Solicitor General.

Upon a careful scrutiny of the facts of the case, it appears that when it was initiated in the Justice of the Peace Court of Cadiz, the appellant was in possession of the fishponds in question, not in her personal capacity but as the administratrix of the estate of the deceased Hila-

rion Martir since the year 1940. Hence, at the time of the inception of the case, the allegation in the information to the effect that from March 7, 1946 to March 7, 1947, the appellant unlawfully and feloniously occupied and constructed dikes in the fishponds in question was not true because since 1940 she was already in possession of the fishponds in question and the dikes were already constructed. What practically happened in the case at bar was that there has been retention of possession of the fishponds in question by the herein appellant notwithstanding the order of the Chief of the Division of Fisheries dated March 7, 1946, but not any illegal occupation of the fishponds as that contemplated under the provision of section 39 of the Fish and Game Administrative Order No. 14. Moreover, the evidence shows that the appellant remained in the possession of the fishponds in question notwithstanding the aforementioned order of the Chief of the Division of Fisheries of March 7, 1946, because she, being the administratrix of the properties of the estate of Hilarion Martir not yet distributed, believed that she had right to do so. Indeed, the fishponds in question were under her care, as administratrix of the estate of the deceased Hilarion Martir, and as such it was her duty to remain in the possession thereof and report about it to the court, and without previous order of the probate court, she could not give up such possession since the properties were then in *custodia legis*, under her responsibility.

On the other hand, it appears that on March 23, 1946, the appellant, as administratrix of the estate, through her counsel Aritao, protested against the approval of the permit in favor of Pedro Trinidad and requested that the same be reconsidered, and again on July 6, 1946, she reiterated such petition but up to the time this case was initiated on March 8, 1947 when she was accused, such petition for reconsideration was not yet acted upon by the Chief of the Division of Fisheries, and due to this fact, the appellant had reason to believe that she was entitled to continue possessing the fishponds in question until her petition for reconsideration is decided by the Department of Agriculture and Commerce; and taking this circumstances into consideration, it cannot be safely held that because the appellant retained or remained in the possession of the lands notwithstanding the rejection of her application for the renewal of her permit, she had wilfully violated section 39 of the Fish and Game Administrative Order No. 14. Furthermore, the right of the estate of Hilarion Martir to renew the permit was recognized by the District Fishery Officer of the Iloilo Station when the latter required the appellant herein, as administratrix of said estate, to file the corresponding

application, to pay the rentals in arrears, and to make a cash bond deposit, all of which she complied with. Under these circumstances, the appellant has good reason to expect that her petition for reconsideration of the concession granted in favor of Pedro Trinidad would be acted favorably. Hence, when the appellant failed to vacate the premises notwithstanding the order of rejection of her petition for the renewal of the permit on the only ground that a previous applicant Pedro Trinidad was granted such permit, it could hardly be maintained that she wilfully intended to disobey said order; in all certainty, her conduct was due to her desire to protect the interests and rights of the estate of Hilarion Martir over said fishponds of which she was the administratrix. Thus, we conclude that the appellant has not maliciously or without reason failed to obey the order of the Chief of the Division of Fisheries of the Department of Agriculture and Commerce, dated March 7, 1946, and consequently it cannot be legally held, beyond reasonable doubt, that she had incurred in the penal sanctions provided for in section 39 of the aforementioned administrative Order No. 14, in connection with section 83 of Act No. 4003.

Wherefore, the decision of the lower court appealed from is hereby reversed and the accused acquitted, with costs *de officio*.

Torres and Felix, JJ., concurr.

Judgment reversed.

[No. 1957-R. October 15, 1948]

PASTORA CASILLAR, plaintiff and appellee, *vs.* VALERIANO CASILLAR ET AL., defendants and appellants

DONATION; EVIDENCE; VALIDITY OF ORAL DONATION; PROOF OF; CASE AT BAR.—In the case at bar, appellant tried to prove that the parcels of land in question were orally donated to him by his grandmother. On the assumption that article 633 of the Civil Code is similar to the Statute of Frauds, he cited *Almirol vs. Cariño* (48 Phil., 67). The appellee objected to the presentation of evidence regarding the alleged oral donation. *Held*: Article 633 of the Civil Code is not of the same nature and category as the statute of frauds, because the lack of a public instrument affects the validity of the donation itself. It is not a matter of proof; it is of the essence of the contract itself. In other words, there is no donation if there is no public instrument, independently of the question of evidence. Article 633 is not a rule of evidence; it is a part of the substantive law. This is shown by the fact that article 1279 of the Civil Code is not applicable to oral donations. (See *Manresa*, Vol. 5, p. 113, 5th ed.; *Tolentino's Commentaries on the Civil Code*, Vol. 1, pp. 383-384.)

APPEAL from a judgment of the Court of First Instance of Pangasinan. Mafialac, J.

The facts are stated in the opinion of the court.

Ignacio R. Baur for appellants.

Conrado Soriano for appellee.

JUGO, J.:

The Court of First Instance of Pangasinan rendered in this case the following judgment:

"In view of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendants, declaring the plaintiff the absolute owner of the three parcels of land described in the complaint, ordering the defendants to restore to the plaintiff the possession of the properties in question, condemning the defendants to pay, jointly and severally, to the plaintiff the amount of ₱1,234 as actual damage suffered by the plaintiff during the period of 1945-1946 and to pay to the plaintiff annually the amount of ₱1,234 to be computed from January, 1947, until the complete restoration of the premises in question to the plaintiff. The costs of this suit are taxed against the defendants."

The issue in this case is: Who is the owner of the three parcels of land described in the complaint?

There is no question as to the identity and description of said parcels of land.

The plaintiff Pastora Casillar was the grand-daughter of Zacarias Casillar who, on December 5, 1944, executed a deed of donation *intervivos*, Exhibit B, giving the parcels of land to the plaintiff Pastora Casillar, the latter accepting them in the same notarial instrument. Zacarias was the owner of said properties, having possessed them for forty-three years as owner since he inherited them from his father Florentino Casillar and having paid the land taxes on the same since the year 1921 up to the time of the donation. He delivered to the plaintiff the corresponding tax receipts, Exhibits A, A-1 to A-8.

The defendant Valeriano Casillar attacks the authenticity of the deed of donation, on the ground that instead of the signature of Zacarias Casillar there appears only his alleged thumbmark, Zacarias knowing how to write. In support of this, he presented Exhibit 6 which bears the signature of Zacarias. It should be considered, however, that Exhibit 6 was executed on February 2, 1935 and at that time there is no question that Zacarias could sign. In 1944, when Exhibit B was executed, he was no longer able to sign on account of his failing sight and old age. This is even supported by the exhibit of the defendants: Exhibits 2, 3, 4, and 5, all executed on December 5, 1944 and Exhibit 7 executed on May 25, 1943, which are only thumbmarked by Zacarias. Exhibits 2, 3, 4, and 5 appear to have been acknowledged before Notary Public Elias N. Cabangon, and Exhibit 7 before Notary Public Conrado N. Soriano. It is hard to believe that these two notaries connived in falsifying those documents.

On the other hand, the defendant Valeriano Casillar tried to prove that these parcels of land were orally donated to him by his grandmother Liberata de la Cruz.

The appellee objected vigorously to the presentation of evidence with regard to the alleged oral donation. Article 633 of the Civil Code reads as follows:

"In order that a donation of real property be valid it must be made by public instrument in which the property donated must be specifically described and the amount of the encumbrances to be assumed by the donee expressed.

"The acceptance must be made in the deed of gift or in a separate public writing; but it shall produce no effect if not made during the lifetime of the donor.

"If the acceptance is made by separate public instrument, authentic notice thereof shall be given the donor, and this proceeding shall be noted in both instruments."

The appellant, assuming that the requirement prescribed by article 633 of the Civil Code is similar to the requirement of the statute of frauds set forth in section 335 of Act 190, the old Code of Civil Procedure, and now section 21, Rule 123, contends that inasmuch as the oral donation has already been consummated, article 633 of the Civil Code does not apply, for the reason that in accordance with the decision rendered in *Almirol vs. Cariño* (48 Phil., 67), the statute of frauds does not apply to partially or fully performed contracts. It should be noted, however, that article 633 of the Civil Code is not of the same nature and category as the statute of frauds, because the lack of a public instrument effects the validity of the donation itself. It is not a matter of proof; it is of the essence of the contract itself. In other words, there is no donation if there is no public instrument, independently of the question of evidence. Article 633 is not a rule of evidence; it is part of the substantive law. This is shown by the fact that article 1279 of the Civil Code is not applicable to oral donations. Manresa on this point says:

"Sólo es *válida* la donación de inmuebles cuando se hace en escritura pública. No ha creído el Código que servía bastante para su efecto el art. 1.280, según el cual, deben constar en documento público los actos o contratos que tengan por objeto la transmisión de derechos reales, porque el art. 633 no pide una *forma* especial a que pueden compelerse las partes, ya *válidamente* unidas por el vínculo de la obligación (art. 1.279), sino que hace depender de esa forma la validez de la donación." (Manresa, Vol. 5, p. 113, 5th Edition.)

These provisions are similar to those regarding the execution of wills, under which there can be no will unless the formal requisites are complied with.

In Tolentino's Commentaries on the Civil Code, we find the following:

"*Deed of Donation*.—A transfer of real property from one person to another cannot take effect as a donation unless expressed in a public instrument. (*Perizuelo vs. Benedicto*, 9 Phil., 621; *Pamitam vs. Lasam*, 60 Phil., 908.) Since donations *propter nuptias* are governed by the rules on donations in general, it has been held that such donations of immovable property, if not made in a public instrument, do not convey any title to the land sought to

be donated. (Canagay *vs.* Lagera, 7 Phil., 397.) The donation itself is void and does not exist; it is absolutely necessary that it be made in a public instrument duly executed with all the prescribed formalities; such document is required, not only as regards third persons, but as between the parties themselves. (Velasquez *vs.* Biala, 18 Phil., 231.) The donation being an absolute nullity without the public instrument, the provisions of article 1279 are not applicable to it, and the donee cannot bring an action to compel the donor to execute a public instrument of donation; that article is applicable only to contracts which validly exist, and cannot be held applicable to a case where the form is required in order to make it valid." (Solis *vs.* Barroso, 53 Phil., 912.) (Vol. 1, pp. 383-384.)

The defendant and his witnesses testified that since the date of the oral donation he has been in possession of these parcels of land for more than forty years, and that he has built a house there which lasted for twenty years and another which stood for the same period afterward. If he was the owner of the land and in possession of it, it is strange that the tax declarations are in the name of Zacarias and that the payment of the land taxes have been made by the latter. The defendant says that the land was declared in the name of Zacarias because he, the defendant, is illiterate. The fact that he is illiterate could not have prevented the putting of the tax declarations in his name, since there is no requirement of the law that the tax declarations cannot be made in the name of an illiterate person. He says that he used to give the money to Zacarias to pay the taxes. Why did he not go himself to the municipal treasurer to pay them, instead of bothering the old man? Being younger he was better able to travel than his father. If he was the real owner of the land, it is hard to believe that his father should have deprived him of his property.

An examination of the evidence of both sides leads us to the conclusion that the oral and documentary evidence of the plaintiff greatly preponderates over the oral evidence of the defendant.

The evidence as to the products gathered by the defendants from the lands in question is very vague and unsatisfactory. The amounts are too inaccurate and no valuations are given, the witnesses saying they did not know. No damages can, therefore, be awarded to the plaintiff.

In view of the foregoing, judgment is hereby rendered declaring the parcels of land described in the complaint the property of the plaintiff and ordering the defendants to restore to her the possession of said properties. No damages are awarded to the plaintiff. The counterclaim of the defendants is dismissed.

As above modified, the judgment appealed from is affirmed, with costs against the appellants. It is so ordered.

Gutierrez David and De la Rosa, JJ., concur.

Judgment modified.

[No. 1043-R. October 16, 1948]

RUF0 P. PAÑGANIBAN, plaintiff and appellee, *vs.* BATANGAS
TRANSPORTATION COMPANY ET AL., defendants and
appellants.¹

1. OBLIGATIONS AND CONTRACTS; CONDITIONAL CONTRACTS; CONSTRUCTION OF CONTRACTS; RECITALS IN CONTRACTS; ACCEPTED PRINCIPLE.—In order to find out the real intention of the parties, having in view all the circumstances surrounding the execution of said contracts, the courts should be guided by the well accepted principle that recitals in a contract should be reconciled with the operative clauses and given effect, so far as possible, and that only where the recital is inconsistent with the covenant or promise, that the latter, if unambiguous, should prevail. (17 C. J. S., 733.) Recitals, therefore, may be looked to in determining the proper construction of the contract.
2. ID.; ID.; RESPONSIBILITY OF OBLIGEE; CASE AT BAR.—Considering that the contracts in question are conditional ones in which the obligation to furnish the trucks for transportation should only arise “when and as the trucks may be available for the purpose,” and that there was none available on the dates they were supposed to be supplied, the obligation of the defendant to deliver the trucks had not arisen and the said defendant can not be held responsible for an obligation which did not exist. (Art. 1114, Civil Code.)
3. ID.; ID.; EVIDENCE; PAROLE EVIDENCE; EXCEPTION TO RULE FORBIDDING ADMISSION OF PAROLE EVIDENCE; CASE AT BAR.—Where the imperfection of the contracts and the failure to express the true intent of the parties were properly put in issue by the pleadings, as in the instant case, section 22 Rule 123 of the Rules of Court is applicable. From the very terms of the contracts in question, it can readily be seen that there was incompleteness, something was lacking therein. Due to the circumstances surrounding their execution, something had to be done from time to time, as the supply of transportation improved or deteriorated. The plaintiff, having violated the time limits in connection with the previous contracts, for failure to pay the fines provided therefor, there arose the necessity on the part of the defendant of calling his attention to the copy of General Order No. 2 (Exhibit 2 of appellant), requiring a bond of P50 to answer for the payment of such fines. Said requirement should be read into the contracts as modification and addition thereto without in any way destroying their integrity. (Canuto *vs.* Mariano, 37 Phil., 840.) The parole evidence presented in the instant case does not deny that the original agreement of the parties was that which the writing purported to express, but merely tends to show that they had exercised the right to change or modify the same, and meet the particular changes in the situation as circumstances demanded.
4. ID.; ID.; DAMAGES; SPECULATIVE PROFITS AS BASIS FOR DAMAGES; SETTLED PRINCIPLE.—The contracts in question having expressly excluded black market price at the time the obligation was constituted, damages, the determination of which depended upon it, is a mere contingency and comes within the purview of article 1107 of the Civil Code. It is a well-settled principle that speculative profits based on black market prices cannot be

¹ See Supreme Court resolution, G. R. No. L-2625 dated January 13, 1949. Petition dismissed for lack of merit.

recovered as damages, unless they are strongly supported by proofs.

APPEAL from a judgment of the Court of First Instance of Manila. Jugo, J.

The facts are stated in the opinion of the Court.

Gibbs, Gibbs & Chuidian for appellants.

Tomas P. Pañganiban for appellee.

PAREDES, J.:

This is an appeal taken from a judgment of the Court of First Instance of Manila, condemning the defendants to pay the plaintiff, jointly and severally, the sum of ₱3,700 with the legal interest from the date of the complaint until paid, with costs against the defendants.

Six contracts designated as Exhibits A to F were executed by the parties on June 19, 1945, for the transportation of foodstuffs from Talaga, Tanauan, Batangas to Manila for the sum of ₱77 per trip of each truck. The contracts, Exhibits A and B, were not regularly complied with on the part of the appellants, because of the delay in the performance thereof, such as late arrivals of the trucks, the first having been late for about 18 hours, while the second, for about 24 hours. Due, however, to complaints made by the plaintiff, the truck called for in Exhibit C arrived on time on the night of July 18, 1945. Exhibit D called for a truck on the night of July 22, 1945; Exhibit C, for a truck on the night of July 25, 1945; and Exhibit B, for a truck on the night of July 29, 1945. On these dates, the defendants failed and refused to send trucks, thereby causing, according to the plaintiff, losses of merchandise which were then ready for loading, in the sum of ₱10,500. The defendants alleged that no trucks were then available, and, in accordance with appendices 4, 5 and 6 of the contracts, they could not be held responsible therefor; that these appendices did not contain the complete agreement between the parties on the matter of trucks covered by Exhibits D, E and F; that all these agreements were subject to other conditions, usages, rules and regulations issued by the defendants for the proper conduct of their business; that it was the practice of the defendants to require a deposit of ₱50 before sending trucks on agreement, but plaintiff failed to comply with this requirement, of which he was personally and fully informed, and that on July 19, 1945, defendants sent a truck, but as plaintiff delayed the truck considerably, by not having cargoes, he was warned that unless deposit was made, no trucks would be sent for appendices 4, 5 and 6.

The defendants contend that the trial court erred (1) In not finding that the contracts were subject to a condition which was not fulfilled, and consequently did not give

rise to any obligation on the part of the defendants; (2) In not finding that plaintiff violated the terms of the contract, and that said contracts were automatically cancelled by their very terms; and (3) In awarding damages. The plaintiff did not appeal from that portion of the decision disallowing the capital invested by the plaintiff for merchandise in the trip, object of Exhibit D, in the sum of ₱8,100, by awarding only the expected profits therefrom.

The standard printed contract entered into between plaintiff and defendants of which Exhibits A to F are identical reproductions, reads as follows:

“CONTRACT FOR TRANSPORTING PRODUCE

“June 19, 1945.

“In undertaking the transportation of merchandise under this contract *when and as trucks may be available for this purpose*, it is understood, stipulated and agreed as between the contractor and the carriers that:

“1. This contract is not a speculative venture; that *truck* will be used to transport contractor's own merchandise and under no circumstances will truck, or space therein, be subleased to others at higher rates;

“2. The contractor agrees to the stipulated transportation charges and that same are to be paid before departure of truck from point of origin;

“3. The merchandise thus transported is to be brought to designated markets in Manila, and there sold at *applicable ceiling prices fixed by* the government;

“4. Said produce may be diverted from one market to another when circumstances make such proceeding necessary;

“5. No passengers will be carried on trucks loaded to full capacity with freight, except owner-contractor and not to exceed four helpers;

“6. Trucks must leave place of origin not later than *6:00 o'clock in the morning in all cases where they load overnight*;

“7. Not more than two hours will be allowed for daytime loading at any place of origin, or for unloading after arrival at destination in Manila;

“8. *Any delay caused by failure on the part of contractor to comply with the above conditions will be charged for at the rate of ₱10.00 per hour*;

“9. *Violation of any conditions of this contract will automatically cancel same.*

“In witness whereof contractor signs office copy of this agreement.

“Contract price—₱77.00

LAGUNA TAYABAS BUS CO.

BATANGAS TRANSPORTATION CO.

“(Sgd.) *Illegible*

“Manager

“RUFO P. PAÑGANIBAN

By: (Sgd.) “TOMAS P. PAÑGANIBAN

Contractor.”

The appendix below the signatures of the parties reads (in case of Contract Exhibit D, for example) as follows:

“YARDMASTER:

“Pursuant to the above please arrange to have one truck at Talaga Bat. on the night of *July 11, 1945 for the transportation*

of merchandise consisting of vegetables, etc. belonging to Mr. Rufo P. Pañganiban from that place to Manila early on the morning of July 22, 1945.

“(Sgd.) L. DE LOS REYES
“*Chief Clerk*”

The defendants invoke the recital of the contract, arguing that the rest thereof is subject to the plain and primary stipulation that the defendants undertook the transportation of merchandise only “when and as trucks may be available for this purpose.” On the other hand, the plaintiff alleged, and the trial court sustained him, that the first paragraph was merely a preamble to the contract and is subject to the clauses following it. In order to find out the real intention of the parties, having in view all the circumstances surrounding the execution of said contracts, we should be guided by the well accepted principle that recitals in a contract should be reconciled with the operative clauses and given effect, so far as possible, and that only where the recital is inconsistent with the covenant or promise, that the latter, if unambiguous, should prevail. (17 C. J. S., 733.) Recitals, therefore, may be looked to in determining the proper construction of the contract.

Immediately after liberation, in a determined effort to relieve the inhabitants of this country, the military and civilian authorities jointly adopted several measures, among which was the imposition of official ceiling on the prices of prime commodities, because of acute shortage in Manila and the improvement of transportation facilities. The United States Army, therefore, through the Philippine Civilian Affairs Unit (PCAU) furnished trucks to established transportation companies. The appellant company was at the time under a system known as emergency with a limited number of units, mostly engaged in the transportation of foodstuffs to Manila and passengers out of Manila. The supply of trucks by the Army was so disproportionate to the unusual demand for them and breakdowns became so frequent that the Appellant made it to appear in their printed contract forms that it agreed to transport merchandise only “when and as trucks may be available for the purpose.” It was known that the appellant company had dealt with from 100 to 150 persons every day, requesting trucks, so that it was necessary to inform them that they had to wait for their turn and it would send them trucks if it had them and that it would not guarantee any delay because trucks were contracted for a month ahead and there was no way of knowing if it had trucks available on any particular date. Those with whom arrangements had been made to furnish them trucks, therefore, would usually go to its office, a day or two beforehand, in order to ascertain whether trucks would be available.

The very terms of the contracts themselves reveal the existence of such emergency policy. And within this panorama, the six contracts were conceived on the same day, June 19, 1945, barely six months after the liberation of this war-torn country.

We are concerned merely with the last three contracts in which the corresponding requests to the yard-master were made to "arrange" transportation for July 22, 25, and 29, 1945. As there seems to be no dispute as to the fact that trucks were not sent by the Appellant on these days, the query is: Had there been justifiable cause for the unsending of these trucks on the part of the defendant? This question involves the determination of whether or not the terms of the contracts had been breached by either or both of the parties.

It is our belief that the qualifying phrase "when and as trucks may be available for the purpose" had imposed the condition upon which the obligation of the defendants depended. The circumstances surrounding the execution of these contracts, could have only led the defendants, conscious as they were of the uncontrollable causes, to stipulate in a suspensive condition; they had to make their obligation dependent upon a future and uncertain event. (Article 1113, Civil Code.) And to do that, they had to, as they did, embody in the contracts the so-called preamble or recital. The only mention of date of carriage is in a sort of appendix which was purely an internal office matter, a memorandum from one employee to another of the same company, a *request* to the yardmaster by the chief clerk to "please *arrange to have one truck*" at a certain place and on a designated date, which implied no promise at all of the employee's assurance that these trucks would be at the place and on the time designated. The request to arrange can only imply that efforts would be exerted by the yardmaster to have the trucks on the dates mentioned, when and as trucks might be made available for the purpose. We can not construe the request to the yardmaster independently of the policy and conditions set forth in the recital.

The contingent nature of this arrangement was known to or should have been known by the plaintiff, not only because the contract so clearly provided, but also because those who contracted with the defendants, plaintiff inclusive, were openly warned that there might not be trucks available on the desired dates, and that as a result thereof, the contractors or shippers made it a practice to check up with the defendants, a day or two before the designated dates, as to the actual availability of the trucks for their needs. The evidence is uncontroverted that on the dates mentioned in these contracts, several trucks of the defendant were laid-off for repairs, several

others had been withdrawn by their owners from the control and operation of the defendant, and no trucks were then available for the plaintiff. This being the case, the obligation of the defendant to deliver the trucks had not arisen and the said defendant can not now be held responsible for an obligation which did not exist. (Article 1114, Civil Code.)

In view of paragraph 9 of the standard contract, it behooves us to determine whether the appellant or the appellee or both had infringed the terms thereof. It was stipulated that the merchandise thus transported was to be brought to designated markets in Manila and there sold at applicable ceiling prices fixed by the Government (paragraph 3 thereof), the maximum ceiling price for tomatoes having been fixed at one centavo for every two pieces (Executive Order No. 24, Nov. 6, 1944; Executive Order No. 28, Feb. 28, 1945). Plaintiff declared that there were 30 baskets of tomatoes in the shipment of July 22, for which he paid ₱6,750 or an average of ₱220 per basket, of the size, more or less, of the baskets presented by the defendant in court. Rufo Pañganiban, testifying, said:

"P. Tengo aquí un canasto en el Juzgado, vealo usted, y diga si aquellos canastos eran iguales que este canasto que tengo aquí?—R. Algunos canastos son más grandes que este, y otros son iguales. (El canasto presentado al Juzgado tiene una circunferencia de 1r pulgadas, y de alto, 12 pulgadas)" (t. s. n., p. 55.)

(In view of the arrangement of the letters on the keyboard of the typewriting machine used by the court stenographer, it is assumed that the number corresponding to the latter "r" after figure 1, must be either 4 or 5.) Juan Baldovino, a merchant from Laguna, estimated that such a basketful of tomatoes would have at that time commanded a price, under the official ceiling of from ₱2, to ₱3 per basket, at the most ₱8, depending on the size of the tomatoes which would make the quantity of tomatoes vary from 400 to 600. The difference between the official ceiling price of from ₱2 to ₱8 per basket and plaintiff's expected selling price of ₱220 per basket, is so great that the plaintiff would not have disposed of the said tomatoes without selling them at black market prices. It would have been the height of imprudence and lack of business acumen on plaintiff's part to have sold his tomatoes at the ceiling prices, without incurring in tremendous losses, so that if he had to sell them at all, as he was expected to sell them, it would have been very much more than the ceiling price. The same thing may be said with respect to the two contracts. And this being the case, it is apparent that plaintiff breached the third paragraph of the contract.

General Order No. 2 (Exhibit 2) of appellant company required a bond in the sum of ₱50 to be filed before the

requisition for a truck is filled. We believe that this requirement should be read into the contracts as modification and addition thereto, without in any way destroying their integrity. "When the terms of an agreement had been reduced to writing, it is to be considered as containing all those terms, and, therefore, there can be, between the parties and their successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

(a) Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings; * * *." (Sec. 22, Rule 123, Rules of Court.)

The applicability of this Rule in the present case should not be doubted, because the imperfection of the contracts and failure to express the true intent of the parties, were properly put in issue by the pleadings. From the very terms of the contracts, it can readily be seen that there was incompleteness, something was lacking therein. Due to the circumstances surrounding their execution, something had to be done from time to time, as the supply of transportation improved or deteriorated. The plaintiff, having violated the time limits in connection with the previous contracts, for failure to pay the fines provided therefor, there arose the necessity on the part of the Defendant of calling his attention to the copy of General Order No. 2, requiring a bond of P50 to answer for the payment of such fines. "The rule forbidding the admission of parol or extrinsic evidence to alter, vary, or contradict a written instrument does not apply so as to prohibit the establishment of parol of an agreement between the parties in writing, entered into subsequent to the time when the written instrument was executed, notwithstanding such agreement may have the effect of adding to, changing, modifying, or even altogether abrogating the contract of the parties as evidenced by the writing * * *." (Cannuto vs. Mariano, 37 Phil., 840.) The parol evidence presented in this case does not deny that the original agreement of the parties was that which the writing purported to express, but merely tends to show that they had exercised the right to change or modify the same, and to meet particular changes in the situation as circumstances demanded. Martin Olson, Joseph Benedict, manager and assistant manager, respectively, Luis de los Reyes, chief clerk, Conrado Villano, conductor, Teofilo Cayetano, chief dispatcher, all of the defendant company, and Juan Baldovino, were one in stating that on June 19, 1945, the plaintiff's authorized agent was notified that aside from the stipulations provided in the contracts, the contractor was to be governed from time to time by the existing regulations of the management to which plaintiff agreed; that to meet the particular changes in the situation, the Com-

pany made it a practice to inform contractors of additional conditions in said contracts, one of which was the deposit of a bond in the sum of ₱50, expressed in the Company's General Order No. 2 issued on June 27, 1945, posted around the premises of the Company in Manila; and that on July 19, 1945, because of a reported delay in the use of the trucks under previous contracts, said plaintiff was informed that he was liable for a fine of ₱10 per hour of delay, but as the plaintiff refused to pay, he was told of the requirement for a bond to answer such fines, which he failed to do. This evidence fairly preponderates over the bare denial of the plaintiff who even failed to present, in corroboration of his testimony, the helper who allegedly accompanied him in the conference held on July 19, 1945, at the Office of the assistant manager of the Company.

The appellant finally contends that the trial court took at their face value the claims of the plaintiff regarding the profits he believed he might have realized had he been able to sell his merchandise in Manila. After refusing to grant plaintiff damages for the cost price of tomatoes in the alleged shipment of July 22, the learned trial court reduced it "to the difference between what he could have obtained for the goods, if he had made attempts to do so, and their value," which it fixed at "a sum equal to that of the second item, ₱1,200." This, raised by the expected profits of ₱1,200 in the shipment of July 25 and of the expected profits of ₱1,300 in the shipment of July 29, gave the aggregate amount of ₱3,700. When the official maximum price was only from ₱2, to ₱8 a basket of tomatoes, this Tribunal can not conceive how plaintiff could have made a legitimate profit from tomatoes at an average of ₱220 a basket, without selling them beyond the official ceiling price. Considering the fact that the projected sales were of speculative nature and that the profits he would have received was unconscionable, we would be the last to award the damages sought, for to do so would be to defy and defeat the policy of the Government to alleviate the country from hunger, and would be to reward a violation of the law. A profiteer is a public enemy.

The plaintiff, however, insinuated that because he did not actually sell his merchandise at profiteering prices, he had not violated the contract. Having, however, placed himself in a position where he could not possibly have complied with the stipulation of the contract to sell said goods "at applicable ceiling prices fixed by the Government" (condition No. 3, standard contract), the said plaintiff is guilty of an anticipatory breach of the contract. It is an established doctrine that "where a party bound to the future performance of a contract puts it out of his power to perform it, the other party may treat this as a

breach and sue him at once, having thus an immediate right of action for breach of the contract by anticipation." (Hicks *vs.* Manila Hotel Company, 28 Phil., 325, 337.)

From a strictly legal standpoint, there is hardly any justification for awarding damages. "The losses and damages for which a debtor of good faith is liable are those foreseen, or which might have been foreseen, at the time of constituting the obligation, and which are a necessary consequence of the failure to perform it." (Article 1107, Civil Code.) The contract, having expressly excluded black market price at the time the obligation was constituted, damage, the determination of which depended upon it, is a mere contingency and comes within the purview of the law. From the factual standpoint, and considering the well-settled principle that speculative profits cannot be recovered as damages, unless they are strongly supported by proofs, again the claim for damages filed by the plaintiff can not be sustained. Plaintiff testified that for the trip of July 22, the entire shipment of foodstuffs costing P8,100 was spoiled due to the non-arrival of the truck; that for the trip of June 25, another shipment of foodstuffs, for the same reason, had to be sold at cost, losing thereby an expected profit of P1,200; and that the shipment of foodstuffs on July 29, for like reason, had to be sold at a loss of P1,300 in expected profits. We are not ready to give full credence to this testimony. Petrasanta, a witness for the plaintiff, declared that the shipment for July 25 and July 29, were sold at a loss, thus contradicting plaintiff who stated that they were sold at cost. It is quite unusual to note that plaintiff, upon the non-arrival of the truck on July 22 had hopefully waited until July 25, while his entire shipment costing, according to him, P8,100 went to waste. The fact that the learned trial court refused to grant damages for the value of the merchandise, and against which decision the plaintiff did not appeal, strengthens the conclusion that these tomatoes did not totally decay, but were disposed of, as had been wisely done by the plaintiff, in the case of subsequent shipments. If that shipment was left to decay, the plaintiff should not now be permitted to claim for their value, for it was his duty to minimize his own damages. (De Castelví *vs.* Tabacalera, 49 Phil., 998.) It is also unusual that even after the non-arrival of the truck on July 22, plaintiff had proceeded to invest more money in the purchase of foodstuffs to be shipped on July 25, and when the truck corresponding to the latter date did not arrive, still he invested more money in buying a third shipment for July 29. Aware of the practice of those who contracted with the defendant company to ascertain from it the availability of trucks a day or two before the schedule, and of the fact that on the first shipment, the defendant

had already failed to send the truck, it was plaintiff's plain duty to heed to the alarm, as a good and prudent merchant should have done, to protect his own interest, and find out what would have been the cause of defendant's failure, instead of trusting "que la gente con quienes yo había contratado eran decentes," and supposing "que tenían buenas cabezas." The critical emergency in transportation, imposed upon the plaintiff the duty to adopt such measures and precautions as established by a sound business practice then. In this connection, it seems pertinent to inquire into the capital of the alleged partnership. Petrasanta stated that he had invested ₱1,100, representing one-third of the partnership's capital of ₱3,000. If they had invested ₱8,100 on the shipment for July 22 which, according to this witness, constituted their entire assets, including the original capital, profits and additional contributions, it can not be conceived how plaintiff and witness could have raised the funds with which to buy ₱6,900 worth of tomatoes alone on July 25 and, after a second loss, to purchase ₱5,250 worth of more tomatoes for July 29, or a total sum of ₱12,150. These circumstances coupled with the fact that the alleged partnership did not carry any book of account, except a small memorandum containing merely six entries, relating only to the contracts in question, because that was all "we need here," according to Petrasanta, justify the conclusion that the capital of the alleged partnership underwent an inflation to suit the convenience of the alleged partners. Moreover, the learned trial court could not have been justified in awarding damages for profits on the shipment of July 22, for the simple reason that the complaint was not predicated upon the damages for expected profits, but upon the "value of the damaged merchandise." It, therefore, practically gave what was not asked and based it on pure speculation of its own. The plaintiff had so exaggerated his claim for damages that this Court now finds itself without basis to determine with definiteness the amount to award. It has been held: "Under the circumstances, we are of the belief that the amount of the supposed damages caused to defendants Bass and Trailer, has been exaggerated to such an extent that we can not state with certainty what the amount of actual damage is. By his own exaggeration, defendant-appellee has placed it beyond the power of this Court to grant his relief for damages actually suffered." (*Surigao Express Company vs. Reynaldo P. Honrado*, CA-G. R. No. 152-R, Sept., 1948.)

Considering, therefore, the fact that the contracts in question are conditional ones in which the obligation to furnish the trucks for transportation should only arise "when and as trucks may be available for the purpose"; that there was none available on the dates they were sup-

posed to be supplied; that plaintiff had committed anticipatory breach of the stipulation against black market sales and further breach, by his failure to fulfill the requirement for the deposit of bond; and that the damages for profits claimed were speculative, exaggerated and not sufficiently proven, we hold that the trial court committed the errors assigned by the defendants-appellants, and consequently reverse the judgment appealed from, without pronouncement as to costs. It is so ordered.

Labrador and Barrios, JJ., concur.

Judgment reversed.

[No. 1699-R. October 16, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
ROSA DE GUZMAN *alias* OSANG, defendant and appellant

CRIMINAL LAW; ASSAULT UPON A PERSON IN AUTHORITY; PUBLIC SCHOOL TEACHER AS A PERSON IN AUTHORITY; STATUTORY CONSTRUCTION; ARTICLE 152, (2nd paragraph) REVISED PENAL CODE AS AMENDED BY COMMONWEALTH ACT NO. 578, CONSTRUED.—It is well settled that “referential and qualifying words and phrases, where no contrary intention appears, refer *solely* to the *last* antecedent.” (II Sutherland’s Stat. Const. 448–9, sec. 4921.) Pursuant to this rule, the expression “charged with the supervision of,” appearing in the second paragraph of Article 152 of the Revised Penal Code, as amended, qualifies the word “persons,” which immediately precede the same and is the “last antecedent” thereof, not the terms “teachers” “professors,” who need not, accordingly, be charged with the supervision of any school, colleges or university, to be a person in authority, within the purview of said provision, in relation to article 148 of the Revised Penal Code. Hence, the crime committed by the accused in slapping the school teacher is that of *assault upon a person in authority*.

APPEAL from a judgment of the Court of First Instance of Batangas. Angeles, J.

The facts are stated in the opinion of the court.

Lazaro Marquez for appellant.

Assistant Solicitor General Torres and *Solicitor Bautista* for appellee.

CONCEPCION, J.:

This is an appeal taken by defendant Rosa de Guzman, *alias* Osang, from a decision of the Court of First Instance of Batangas, convicting her of the crime of assault upon a person in authority, and sentencing her to not less than 4 months and 1 day of *arresto mayor* nor more than 2 years, 4 months and 1 day of *prisión correccional*, with the accessory penalties provided by law, and to pay a fine of ₱200, with subsidiary imprisonment, not to exceed one-third of the principal penalty, in case of insolvency, as well as the costs.

The offended party in this case is Rufina Innumerable, a teacher in the public elementary school of Lemery, Batangas. As such she was in charge of the Grade IV pupils, one of them Arsenia de Castro, a daughter of defendant Rosa de Guzman. It appears from the evidence for the prosecution that in the afternoon of February 26, 1947, Arsenia de Castro and two other girls were taken to the class room of Miss Innumerable for investigation, the latter having heard that they had been quarelling. As Arsenia twice intervened while the other girls were being interrogated, the teacher bade her to stop by placing her (Miss Innumerable's) two fingers on Arsenia's lips. Thereafter, the girls were warned that they would be reported to the school supervisor should they quarrel again.

Soon, later, Miss Innumerable and another teacher, Mrs. Felisa Cabrera, left the school house. In the street they overtook Mrs. Alcasid, and other teachers—Miss Ruperta Generoso and a Miss Pesigan. As the group passed in front of the house of appellant herein, the latter met Miss Innumerable and inquired angrily whether she had slapped Arsenia. Miss Innumerable answered in the negative and stated that she ordered Arsenia to stop talking by placing her (Miss Innumerable's) two fingers on her own mouth, but, before she could finish the explanation, appellant herein slapped her face twice with the right hand.

Appellant denied this imputation and tried to prove that it was Miss Innumerable who tried to slap her, although unsuccessfully, the former having succeeded in parrying the blow. The lower court, however, rejected this version and accepted that of the prosecution, with the result above indicated. Hence this appeal.

The record before us fully justifies the decision appealed from. To begin with, the theory of the prosecution is, unlike that of the defense, in line with the ordinary course of events. If appellant had the impression, as she undoubtedly was, that her daughter had been slapped by Miss Innumerable, it is more probable that appellant retaliated against her in the manner testified to by the witnesses for the prosecution, than that Miss Innumerable should try to slap her. In fact, defense witness Diego Estacio declared that "Miss Innumerable demonstrated it (how she bade Arsenia to stop talking) to *herself* by putting her two fingers on her mouth," thus corroborating the version of the prosecution. Secondly, it is apparent that Sofio Capul—who, likewise, took the witness stand for the defense—cannot be relied upon, for he would have the court believe that said demonstration by Miss Innumerable was sought to be made on the person of *appellant* herein, contrary to the aforementioned testimony of Diego Estacio. Thirdly, this witness, as well as appellant herein, asserted that the latter was slapped by the complainant,

although Sofio Capul declared that said complainant had merely *tried* to slap appellant herein, who, likewise, stated on cross-examination that Miss Innumerable had "raised her hand which I parried."

It is obvious, therefore, that the evidence for the defense is too improbable and contradictory to merit any credence. Upon the other hand, complainant's testimony was corroborated by that of Felisa Cabrera and Ruperta Generoso, whose presence at the scene of the occurrence is not denied and whose versions do not bear any of the earmarks of falsehood. In view of the foregoing and inasmuch as the lower court was in a better position than we are to pass upon the credibility of the witnesses, we do not feel justified in disturbing its conclusions on this point.

It is argued that, because complainant was not in charge of the supervision of a public or duly recognized private school—which appellant considers necessary in order that a teacher may be regarded a person in authority—the lower court erred in assuming her status to be such, under the second paragraph of article 152 of the Revised Penal Code, as amended by Commonwealth Act No. 578, which provides:

"In applying the provisions of articles one hundred forty-eight and one hundred fifty-one of this Code, teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges, and universities, shall be deemed persons in authority."

Appellant contends that the expression "charged with the supervision of public or duly recognized private schools, colleges, and universities," qualifies not only the word "persons," immediately preceding the same, but, also, the terms "teachers" and "professors." This would, however, render superfluous the inclusion of "teachers" and "professors" in said provision, for its meaning, under appellant's interpretation, would be the same if the aforementioned words were omitted, so as to declare merely that "persons charged with the supervision of public or duly recognized private schools, colleges, and universities, shall be declared persons in authority." What is more, the theory of the defense would render the provision above quoted absolutely useless, for, even before its insertion in said article 152 by Commonwealth Act No. 578, those in charge of the supervision of a school, such as public school superintendents, had been held to be persons in authority (*People vs. Benitez*, 1 Off. Gaz., 880, Dec. 19, 1942). Indeed, the rule laid down (on December 20, 1933) in *People vs. Mendoza* (59 Phil., 163), to the effect that a public school teacher was not a person in authority under article 152 of the Revised Penal Code, strongly suggests that its subsequent amendment by Commonwealth Act No. 578—on June 8, 1940—must have sought precisely to remove the loophole indicated in the

decision rendered in said case, by declaring positively that "teachers" and "professors" in "public or duly recognized private schools, colleges and universities shall be deemed persons in authority."

At any rate, it is well settled that "referential and qualifying words and phrases, where no contrary intention appears, refer *solely* to the *last* antecedent." (II Sutherland's Stat. Const., 448-9, sec. 4921.) Pursuant to this rule, the expression "charged with the supervision of," appearing in the second paragraph of Article 152 of the Revised Penal Code, as amended, qualifies the word "persons," which immediately precede the same and is the "last antecedent" thereof, not the terms "teachers" and "professors," who need not, accordingly, be charged with the supervision of any school, colleges or university, to be a person in authority, within the purview of said provision, in relation to Article 148 of the Revised Penal Code.

Being in accordance with the facts and the law, the decision appealed from is hereby affirmed, therefore, with costs against the defendant-appellant. It is so ordered.

Dizon and De Leon, JJ., concur.

Judgment affirmed.

[No. 1797-R. October 16, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
ISIDRO DUGAN y LASIRONA, JOSE VILLANUEVA *alias* JOE,
and RUFINO BORJA *alias* RUDY, defendants. ISIDRO
DUGAN y LASIRONA, defendant and appellant.

CRIMINAL LAW; QUALIFIED THEFT; CRIME COMMITTED IS ESTAFA.—

Under the facts of the case, the crime committed by the appellant is not qualified theft but *estafa*, under article 315, 1(b), of the Revised Penal Code. As lessee of the jeepney, appellant obtained possession of it by virtue of a juridical relation with the offended party (a verbal contract of lease), and during the time agreed upon, he had the better right of possession as against the owner, who could not force him to return the same before the lease period expired. The control of appellant over the jeepney is such that, in the absence of prohibition, he could have subleased it to some other person for a greater amount than what he had to pay for its hire from the lessor. In other words, appellant acquired juridical as well as material possession of the lost jeepney, and there is no showing that he had intended to convert or misappropriate the property at the time it was received by him (*People vs. Trinidad*, 50 Phil., 68).

APPEAL from a judgment of the Court of First Instance of Manila. Rodas, J.

The facts are stated in the opinion of the court.

Leodegario Alba for appellant.

First Assistant Solicitor General Gianzon and *Solicitor Carreon* for appellee.

REYES, J. B. L., J.:

Appellant Isidro Dugan y Lasirona leased from the offended party Ester Mortalla on June 14, 1947, in Manila, a jeepney worth ₱2,500. The terms of the lease were that appellant would pay Mortalla ₱18 a day, from 8 o'clock a.m. to 8 o'clock in the evening. Accordingly, appellant took out the jeepney about 8 o'clock a.m. that day, but at 3 o'clock in the afternoon he reported to the owner that the jeepney was stolen in the Province of Bulacan. The offended party, accompanied by appellant, sought the help of the Criminal Investigation, Department of the Military Police Command, and with a CID agent, went to Meycauayan and Sta. Maria, Bulacan, to look for the jeepney that same evening. The party returned to Manila as they could not find any trace of the vehicle. Appellant was investigated and he finally disclosed that he had agreed with two persons to sell the jeepney and to share in the proceeds later in Manila. He signed a statement (Exhibit A) to this effect.

After trial, appellant was convicted by the Court of First Instance of Manila of qualified theft and sentenced to an indeterminate penalty of from 4 years, 2 months and 1 day of *prisión correccional* to 10 years and 8 months of *prisión mayor*, to indemnify Ester Mortalla in the sum of ₱2,500 without subsidiary imprisonment in case of insolvency, and to pay the costs. From this judgment appellant has taken this appeal.

The principal issue raised by the three assignments of error of appellant is the admissibility of the confession, Exhibit A, which appellant claims to have been obtained through violence and intimidation by the police officer who investigated him. Appellant relies only on his uncorroborated testimony, which certainly cannot overthrow the strong presumption in favor of the regularity and fidelity with which agents of the law perform their official duties, specially where there is no showing that such officers were inspired by improper motives. The alleged use of force is not only denied by the officers, but appellant himself admitted that he voluntarily signed Exhibit A. Furthermore, the offended party also corroborated the officers in their denial.

Appellant's allegation that the testimony of the offended party is not worthy of belief as being biased by self-interest does not merit consideration, for her desire to recover her jeepney and to see the culprits punished does not mean that she would resort to unlawful means to achieve her ends. The fact is that the offended party took the story of the loss of the vehicle in good faith, and it was only after the appellant had failed to substantiate it when they visited the places where he was supposed to have lost the jeepney that she and the authorities took a different

attitude towards appellant. The latter, realizing probably the futility of sticking to his implausible explanation, not only admitted his guilt but named two other persons with such particularity that he could not have invented them, and, therefore, whose identities could not have been forced out of him by the authorities. We are sufficiently convinced that Exhibit A was signed at the free will of appellant and that his contention is a last and desperate try at evading criminal responsibility.

Under the facts of the case, however, the crime committed by the appellant is not qualified theft but *estafa*, under article 315, 1(b), of the Revised Penal Code. As lessee of the jeepney, appellant obtained possession of it by virtue of a juridical relation with the offended party (a verbal contract of lease), and during the time agreed upon, he had the better right of possession as against the owner, who could not force him to return the same before the lease period expired. The control of appellant over the jeepney is such that, in the absence of prohibition, he could have subleased it to some other person for a greater amount than what he had to pay for its hire from the lessor. In other words, appellant acquired juridical as well as material possession of the lost jeepney, and there is no showing that he had intended to convert or misappropriate the property at the time it was received by him (*People vs. Trinidad*, 50 Phil., 68).

The decision appealed from is hereby set aside; but as the information does not allege the requisites of the crime of *estafa*, the appellant shall be committed to answer for the proper offense, upon information filed within a reasonable time. Let a copy of this decision be furnished to the City Fiscal of Manila for his information and guidance. With costs *de officio*.

Gutierrez David and Borromeo, JJ., concur.

Judgment is set aside with instruction.

[No. 2113-R. October 18, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. ILDEFONSO AGUSTIN *alias* BERRY, defendant and
appellant.

1. CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARMS; "ANIMUS POS-
SIDENDI" CONSTRUCTIVE POSSESSION PUNISHABLE.—Not only
actual, physical possession of a firearm, without permit or
license therefor, is punishable, but also constructive possession
thereof. Neither is ownership of a firearm essential for convic-
tion.
2. CRIMINAL PROCEDURE; INFORMATION; PROOF OF NEGATIVE AVERMENT
IN INFORMATION; SEC 71, RULE 123, RULES OF COURT.—A
negative averment in an information need not be proved unless
it is an essential ingredient of the offense charged.

APPEAL from a judgment of the Court of First Instance of Pangasinan. Baltazar, J.

The facts are stated in the opinion of the court.

Arturo V. Mallazo for appellant.

Assistant Solicitor General Barcelona and *Acting Solicitor Consing* for appellee.

DE LEON, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of Pangasinan, finding Ildefonso Agustin *alias* Berry, guilty of illegal possession of firearms, and sentencing him to one (1) year and one (1) day imprisonment, besides ordering the forfeiture of the firearm in question and the payment of the costs.

It appears in evidence that at about 4 o'clock in the afternoon of August 19, 1946, appellant Ildefonso Agustin *alias* Berry went to the restaurant of Rosa Go, situated in barrio Carmen, Rosales, Pangasinan. Once inside, he approached the *mahjong* table where Rosa was then playing with her husband, a brother and a brother-in-law, and, without much ado, pointed the gun (Exhibit A) at Rosa, demanding explanation as to why the latter's sister had asked him to pay for the meals he had eaten in their place. The game was stopped and in the ensuing commotion, Rosa's husband got hold of the appellant's neck, while Rosa grabbed the latter's pistol. Once dispossessed of his firearm, appellant pleaded that it be returned to him, promising he would never return to, nor cause further trouble in said place, so Rosa finally gave it back to him. However, at about 11 o'clock that night and during a heavy downpour of rain, certain neighbors came to inform the aforementioned spouses that appellant was then trying to gain entrance into their place through the gate of one Mr. Ocampo. For this reason, they immediately went to the población of Rosales to report the matter to the authorities. An MP patrol headed by Sergeant Castulo at once proceeded to Carmen to apprehend the person reportedly causing trouble. Upon finding appellant, the patrol brought him to their headquarters at Rosales. There and upon investigation, appellant admitted that he was the very same man who made trouble in Rosa's place, and that at that time he had a pistol. Two days later or on August 21, 1946, two MPs went back to Rosa's place to locate the firearm which the accused said he had left there. They found it (Exhibit A) covered with leaves and barks of trees near an oven in Rosa's restaurant. When the pistol was brought to the MP headquarters, it was shown to appellant, who then and there admitted that it was the very same firearm he had when he was in Rosa's restaurant on August 19, 1946.

On August 22, 1946, appellant accompanied by some policemen, appeared before the Municipal Mayor of Rosales in the latter's office and there swore voluntarily his affidavit (Exhibit B), after assuring the said mayor that he understood and confirmed all the contents thereof and without making any complaint whatsoever of any maltreatment. In said Exhibit B, appellant admitted that, on the occasion in question, he was drunk and was brandishing the said firearm in several restaurants in Carmen; that said weapon was pledged to him by one Casimiro Bautista in the sum of P15; and that he had been possessing it for self-defense.

Testifying as the sole witness on his behalf, appellant said that he saw the pistol (Exhibit A) in the hand of Casimiro Bautista in the night of August 19, 1946; that he did not use it in intimidating people in barrio Carmen; that he was in the restaurant of Rosa Go that night, because he was courting a girl there; that he did not place Exhibit A near an oven; that he signed the document (Exhibit B), because he was maltreated and forced to signing the same; that because of said maltreatment, he was treated by Dr. Coloza as evidenced by medical certificate Exhibit 1 dated August 26, 1946. He admitted that in another criminal case No. 17203 of the Court of First Instance of Pangasinan for attempted homicide with the use of the pistol in question, arising from the very incident of August 19, 1946, as above stated, he voluntarily pleaded guilty to the crime of grave threats and was sentenced accordingly.

The trial court, who was in a better position than we are to pass upon the credibility of the witnesses, rejected completely the version of the defense and held that the accused had in his possession on the date in question the firearm (Exhibit A), stating among other things, the following:

"La defensa con el testimonio único del acusado ha tratado de probar que esta Exhibito "B" ha sido tomado mediante fuerza y maltrato y que había firmado sin entender el contenido del mismo. Pero el acusado admitió que habla el Ingles y en efecto contestaba las preguntas dirigidas en Ingles de su abogado y del Juzgado sin necesidad de interprete. No se puede creer que una persona del grado de educación del acusado haya firmado el Exhibito "B" sin haberlo leído detenidamente, a parte, del testimonio del Alcalde de Rosales ante quien suscribo dicho affidavit, el acusado no presentó ningún reclamo de que habia sido maltratado (Página 27, t. n. t.) A que dicho Alcalde preguntó al acusado si ha entendido el contenido de dicho affidavit y el acusado contestó afirmativamente. Con respecto al Exhibito "1" de la defensa, certificado medico expedido por el Dr. Crisanto R. Coloma, no puede afectar el valor probatorio del Exhibito "B" porque este exhibito fué suscrito y jurado ante el Alcalde de Rosales, Pangasinán, el 22 de Agosto de 1946 y el Exhibito "1" fue expedido por el Dr. Coloma el 26 de Agosto de 1946."

We are perfectly in accord with the above findings, fully justified, as it is, by the record before us.

Much stress has been laid by counsel on the contention that appellant, not having been found in actual or physical custody or control of the firearm in question cannot be convicted of the crime under prosecution. This Court has already passed upon a similar question and held:

"The law does not punish physical possession alone but possession in general. This includes not only actual physical possession, but also constructive possession or the subjection of the thing to the owner's control." (People vs. Elena Francisco y Villanueva, No. 188, 43 Off. Gaz., No. 4, p. 1272.)

On August 19, 1946, while in the restaurant, the appellant was in actual, physical possession of said firearm, using it in intimidating the people therein. When on August 22, 1946, the MPs found the said weapon near the oven of said restaurant where appellant hid it, the same was still in his possession constructively or subject to his control. Whether we judge the case, therefore, under either of said circumstances, appellant's possession falls clearly within the penal sanction of the law on the matter, appellant not having proved any permit or license therefor.

Appellant also argues that the pistol in question was of the ownership of Casimiro Bautista as if ownership were an essential requisite for conviction. But even assuming this to be true, appellant is nevertheless criminally liable, because he had been holding it with *animus possidendi* for self-defense according to his affidavit Exhibit B, without the necessary license or permit to possess the same.

But counsel further argues that the prosecution failed to prove that the appellant had no permit to possess the weapon in question. Suffice it to say that such allegation in the information is a negative averment and under Rule 123, section 71 of the Judicial Rules, a negative averment need not be proved unless it is an essential ingredient of the offense charged. It is sufficient for the prosecution to prove, as was done in this case, possession of a prohibited weapon by the defendant with *animus possidendi*, and the existence of a valid authority or permit being a matter of defense should be proved by the accused himself. Moreover, appellant, in his affidavit Exhibit B, expressly admits that he was possessing the said firearm contrary to law.

Lastly, defense contends that appellant's confession (Exhibit B) was obtained by force and should not have been considered by the trial court. Aside from what the trial court has said on the matter, as we have quoted above, we hold that such naked assertion is insufficient to overcome the strong presumption in favor of the regularity of the acts of the agents of the law in the performance of their

official duties. (U. S. *vs.* Melad, 27 Phil., 489; U. S. *vs.* Claso, 32 Phil., 413.) We have carefully examined the record and have found the appellant guilty beyond reasonable doubt.

Accordingly, the judgment appealed from is hereby affirmed, with cost against the appellant.

Concepción and Dizon, JJ., concur.

Judgment affirmed.

[No. 1977-R. Octubre 19, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra*
FELICISIMO CLIMACO, acusado y apelante

DERECHO PENAL; VEJACIÓN INJUSTA; A FALTA DE ACTOS INEQUIVOCOS DE OBSCENIDAD, EL DELITO NO PUEDE CALIFICARSE DE ACTOS DE LASCIVIA, SINO DE VEJACIÓN INJUSTA; ARTÍCULOS 287 y 336, CÓDIGO PENAL REVISADO; CASO DE AUTOS.—El hecho procesal no constituye el delito de *actos* de lascivia que se define en el artículo 336 del Código Penal Revisado, sino el de *vejación injusta* castigado en el párrafo segundo del artículos 287 del mismo Código, porque el beso y el abrazo no son, necesariamente actos de lujuria, porque también pueden ser puras manifestaciones de afecto. Los actos deben ser inequívocos de obscenidad para que caigan bajo la sanción penal del referido artículo 336. Armado como estaba el acusado, podría haber ejercitado otros actos, más se limitó a besar y abrasar. (Cuestión 5-5, Viada 229; *People vs. Arpon*, CA-G. R. No. 5-R L-85, Promulgada marzo 19, 1947.)

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Zamboanga. Villalobos, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Sres. José T. Atilano y Abelardo S. Fernández en representación del apelante.

El Procurador General Auxiliar Sr. Kapunan, Jr. y el Procurador Sr. Angeles en representación del apelado.

DE LA ROSA, M.:

El Juzgado de Primera Instancia de Zamboanga condenó a Felicísimo Climaco a sufrir la pena indeterminada de tres (3) meses de arresto mayor a dos (2) años, cuatro (4) meses y un (1) día de prisión correccional, con las accesorias de la ley, y a pagar las costas, por actos de lascivia cometidos en la persona de Agripina Estrada, fallo contra el cual apeló.

Felicísimo Climaco y Agripina Estrada eran empleados de la Zamboanga Autobus Co., como chófer y conductora, respectivamente. A las 7:00 de la noche del 4 de agosto de 1946, como era de costumbre, cogieron con los otros empleados el truck de la compañía guiado por Filemón Guerra, para retirarse a sus casas. Con excepción de ellos dos, que vivían en el barrio de Tetuan, a unos tres

(3) kilometros de Zamboanga, sus compañeros bajaron en Santa María. Al quedarse sólo dentro del coche, Climaco se trasladó al lado de Estrada, y ocurrió:

“ESTRADA:

“A. On our way Mr. Climaco was sitting near the driver, but when we were nearing the junction of Tumaga-Santa Maria road Mr. Climaco changed seat and went to the back part of the bus where I was sitting.

“Q. What did Mr. Climaco do?—A. Then Mr. Climaco held my neck at once saying, “Now, we are going to decide.”

* * * * *

“Q. What did Mr. Climaco do?—A. He told me that on account of me his wife quarrelled with him all the time.

* * * * *

“Q. Did you answer him?—A. I answered, ‘if your wife is jealous why do you treat me this way?’

“Q. How was he treating you?—A. Then while holding my neck he begun kissing me and held me tightly to his breast. (T. n. t. pp. 4 y 5)

* * * * *

“Q. How many times did the accused Climaco kiss you?—A. Two times.

“Q. Where was the first kiss given you?—A. On the right check.

“Q. The second kiss?—A. On the nose.

* * * * *

“Q. Aside from kissing you and holding you tightly is there any other thing that the accused did to you?—A. Yes, sir.

“Q. What?—A. I resisted. So, he pulled out a revolver and placed the barrel of the revolver on my stomach and he held my neck again. (T. n. t., p. 6)

* * * * *

“Q. After pointing the gun on your stomach, what else did the accused do to you, if he did anything to you?—A. While the accused here had the barrel of his revolver pointed at my abdomen I called the driver, saying: ‘You see, Mr. Guerra, what Mr. Climaco is doing here.’

“Q. What did Mr. Guerra do, if he did anything?—A. Mr. Guerra said, ‘Do not do like that, Chimong. If you want you better talk nicely.’” (T. n. t., pp. 8 y 9.)

* * * * *

Esto, que Estrada acaba de relatar, es todo lo que ha habido entre élla y Climaco en el trayecto de Zamboanga a Tetuan. El se apeó antes, en un recodo de la carretera. Ella, al llegar a su casa, llorando dió cuenta a su padre de lo ocurrido. En esa misma noche, su padre y élla fueron a Zamboanga en el truck de Guerra, informaron al manager de la compañía de lo sucedido, quien les aconsejó que llevaran el caso ante los tribunales, al día siguiente dieron cuenta de ello al Fiscal y el 6 del propio mes, élla presentó la denuncia que encabeza este expediente.

Contiéndose por la defensa (1) que lo que sucedió era que Estrada llamó a Climaco “chapero”—porque él había informado a la Compañía que élla se apropiaba del pasaje—y él la cogió de la mano, porque al acercarse a ella, le propinó un bofetón; y (2) que, si en anteriores ocasiones,

en que por falta de transportación él y élla se retiraban juntos a pie, nada malo ha ocurrido, no es de creer que en la noche de autos, embarcados ambos en un truck, con el chófer por delante, se haya él atrevido a propasar y cometer actos libidinosos.

La compañía exonoró a Estrada de la imputación de que hacia sisas; y excepción hecha de la palabra "chapero", si es que élla lo ha pronunciado, cosa que lo niega, no ha hablado mal de él, que se sepa, ni hizo nada que denote rencor.

Estrada niega haberse retirado de noche a Tetuan con el acusado, pues que, según élla, cuando faltaba vehículo para volver a su casa, se quedaba en Zamboanga, en la casa de un pariente.

El Juzgado *a quo* no ha considerado probada la defensa interpuesta, y el record no suministra fundamento para alterar la conclusión a que ha llegado, en cuanto a la responsabilidad del acusado por el hecho procesal. Parece, sin embargo, que no constituye el delito de actos de lascivia que se define en el artículo 336 del Código Penal Revisado, sino el de *vejación injusta* castigado en el párrafo segundo del artículo 287 del mismo código, con arresto menor o multa de ₱5 a ₱200 o con ambas penas, porque el beso y el abrazo no son, necesariamente actos de lujuria, porque también pueden ser puras manifestaciones de afecto. Los actos deben ser inequívocos de obscenidad para que caigan bajo la sanción penal del referido artículo 336. Armado como estaba, Climaco podría haber ejercitado otros actos, mas se limitó a besar y abrazar. (Cuestión 5—5 Viada, 229; *People vs. Arpon*, CA. G. R. No. 5—R, L-85. Promulgada marzo 19, 1947.

Modificando, por lo tanto, la sentencia de que se apela, se condena al apelante Felicísimo Climaco por el delito de vejación injusta, cometido en la persona de Agripina Estrada, a pagar ₱100 de multa, con prisión subsidiaria correspondiente en caso de insolvencia, y las costas de ambas instancias. Así se ordena.

Jugo y Rodas, MM., están conformes.

Se modifica la sentencia.

[No. 957—R. October 21, 1948]

In the matter of the guardianship of ANITA ELNORA CHUA.
SILVESTRE TIONGCO, petitioner and appellee, *vs.* CHUA
LIAN, oppositor and appellant.

1. GUARDIANSHIP; MINOR'S PERSON AND PROPERTY, APPOINTMENT OF GUARDIAN FOR; NO ABSOLUTE PREFERENTIAL RIGHT TO APPOINTMENT IN FAVOR OF A RELATIVE.—Neither the wording nor the spirit of section 1 of Rule 94 of the Rules of Court justifies an interpretation that a relative has an absolute preferential

right over a friend or other person, for appointment as guardian for the person and property of a minor.

2. *Id.*; *Id.*; COURT'S DISCRETION IN APPOINTMENT AND REMOVAL OF GUARDIAN.—A large discretion must be allowed the judge in the appointment and removal of guardians for minor children (*Feliciano vs. Camahort*, 22 Phil., 235). And the court's discretion must be carefully and wisely exercised to the end that the proper party—whether relative or not—who, by reason of his character, his personal disinterestedness and absolute freedom from influences antagonistic to the moral, social and financial interest of the ward, will serve best the minor's highest welfare—may be appointed. (See: *Lee vs. Lee*, 67 Ala. 406; *Describes vs. Wilmer*, 69 Ala. 25, 44 Am. Reports 503.)

APPEAL from an order of the Court of First Instance of Negros Occidental. Arellano, J.

The facts are stated in the opinion of the court.

Porfirio C. Casa for appellant.

Ernesto M. Piccio for appellee.

DE LEON, J.:

Silvestre Tiongco, as next friend of the minor Anita Elnora Chua, three years, seven months old, has presented this petition praying, for the reasons therein stated, that he be appointed guardian of the person and property of the said minor.

Against said petition Chua Lian, father of Roberto Chua, deceased father of the said minor, filed an opposition and prayed that he be appointed, instead of the petitioner, the guardian of the said minor.

After due hearing, the Court of First Instance of Occidental Negros ordered the issuance of letters of guardianship in favor of the petitioner, upon his filing of a bond in the sum of ₱1,000 subject to the court's approval. Against said order, the oppositor now appeals to this court, contending that the lower court has abused its discretion in appointing the petitioner who is a stranger to the minor, instead of the oppositor who is the minor's paternal grandfather.

The pertinent portions of the lower court's order read as follows:

"Resulta que Anita Elnora Chua, la menor cuya tutela se pide en este expediente, tenía, en la fecha de la solicitud, 3 años y 7 meses de edad; que sus padres eran el Teniente Roberto Chua, del Regimiento de Infantería No. 71 del Philippine Army, y Alicia Ramos de Chua; que el Teniente Ramos murió en el campo de concentración de O'Donnell hacía el 15 de mayo, 1942, y Alicia Ramos Chua, a su vez, murió el 9 de febrero, 1946, siendo los únicos supervivientes parientes próximos de la menor, el oppositor Chua Lian y Santiago Abrigo, abuelos paternos de ella, y Regino Ramos y Anaclea Cantón, abuelos maternos de la misma; que al partir para la guerra el Teniente Roberto Chua, la menor vivía en poder de su madre, Alicia Ramos Chua, y ambas vivían bajo el cuidado y protección del solicitante Silvestra Tiongco; que meses antes de la muerte de Alicia Ramos, ésta otorgó un poder especial

Exhibit A a favor del solicitante Silvestre Tiongeo, confiriéndole el poder necesario para gestionar, cobrar y tener la administración de todo el dinero proveniente de los servicios del difunto Teniente Roberto Chua en el Ejército Filipino, demostrando así la gran confianza de dicha Alicia Ramos Chua, madre de la menor, en el solicitante; que, a su muerte, la menor Anita Elmora Chua fué puesta bajo el cuidado de sus abuelos maternos, Regino Ramos y Anacleto Cantón, en cuyo poder hasta la fecha continúa viviendo, que aun en vida de Alicia Ramos y después de muerte hasta el presente, la menor viene recibiendo su manutención, cuidado y educación del solicitante; que este interes y afecto del solicitante hacia la menor se debe a que su madre, Alicia Ramos Chua, era ahijada de la esposa de aquél y antes de casarse con el Teniente Roberto Chua estuvo trabajando como empleada en los negocios del solicitante; * * *.

“Considerando que el mismo abuelo materno de la menor, Regino Ramos, padre de la difunta madre de dicha menor, no solamente ha expresado su voluntad favorable al solicitante sino que se presentó como testigo para demostrar su interes para que fuese el solicitante nombrado tutor de su nieta, en vez del opositor Chua Lian, y considerando, además, que la difunta Alicia Ramos Chua, madre de la menor, antes de su muerte expresó en un poder especial su voluntad de que el solicitante fuese el que tuviese el cuidado de la menor y cobrarse los beneficios del Ejército designado a favor del Teniente Roberto Chua, padre de la misma menor, todos los cuales arguyen en favor del solicitante, quien por otro lado, ha expresado su voluntad de hacerse cargo de la persona y bienes de dicha menor, ofreciendo prestar la fianza que el afecto el Juzgado fije.”

The record also shows that petitioner is a Filipino citizen, forty years of age, a pharmaceutical chemist and a resident of good standing in the City of Bacolod, while the oppositor is an alien, over seventy-three years of age, residing in the said city. Under the foregoing facts and circumstances, may this appellate court be justified in holding that the judge below has arbitrarily acted in appointing the petitioner instead of the oppositor?

The appointment of a guardian for the person and property of a minor is governed by section 1 of Rule 94 of the Rules of Court, as follows:

“SECTION 1. *Who may petition for appointment of guardian for resident.*—Any relative, friend, or other person on behalf of a resident minor or incompetent who has no lawful guardian, or the minor himself if fourteen years of age or over, may petition the court having jurisdiction for the appointment of a general guardian for the person or estate or both, of such minor or incompetent. An officer of the Federal Administration of the United States in the Philippines may also file a petition in favor of a ward thereof and the Director of Health, in favor of an insane who should be hospitalized, or in favor of an isolated leper.”

Neither the wording nor the spirit of the above quoted rule justifies an interpretation that a relative has an absolute preferential right over a friend or other person, for appointment as guardian. In *Feliciano vs. Camahort*, 22 Phil., 235, the Supreme Court has already hold:

“Touching the appointment and removal of guardians for minor children, a *large discretion* must be allowed the judge who deals

directly with the parties and who for this reason should be exceptionally well qualified to form a correct opinion as to the special needs of the minors, the character and qualifications of persons whose names are proposed for appointment as guardians, and the wise and prudent course to be adopted under all the varying circumstances to be found in each particular case."

And the court's discretion must be carefully and wisely exercised to the end that the proper party—whether relative or not—who, by reason of his character, his personal disinterestedness and absolute freedom from influences antagonistic to the moral, social and financial interests of the ward, will serve best the minor's highest welfare—may be appointed.

"In the selection of a guardian, the interest, safety, and well-being of the infant ward, are matters of prime, paramount consideration. *Lee vs. Lee*, 67 Ala. 406. Infants—particularly doubly orphaned, destitute infants—age, or should be wards of society, if not of government. Their protection and proper training are alike the instinct and mandate of an enlightened humanity. No sordid greed of lucre, no unchastened spirit of propagandism, should shade or pollute its benevolent purposes. The best attainable good of the infant should be the great, dominating principle; not the provisional benefit, but the lasting good." (Describes *vs. Wilmer*, 69 Ala., 25, 44 Am. Reports 503.)

Taking into account the circumstances of the petitioner and the oppositor as set forth above, as well as the other surrounding circumstances mentioned in the appealed order, we hold that no clear showing has been made to the effect that the trial court has committed a grievous error in appointing the petitioner-appellee.

Accordingly the decree entered in these proceedings is hereby affirmed, with costs against the appellant. It is so ordered.

Concepción and Dizon, JJ, concur.

Judgment affirmed.

[No. 1707-R. October 21, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
ROMERO JAVIER, accused and appellant

CRIMINAL LAW; HOMICIDE; SELF-DEFENSE; GUN CONSIDERED REASONABLE MEANS TO REPEL AN IMMINENT ATTACK WITH A "KRIS;" CASE AT BAR.—In the case at bar the accused fired at the deceased when the latter was about to pick up a "kris". It is unnecessary to say that a "kris," a Moro weapon, is very deadly, even as deadly at close range as a firearm. In the mind of the accused there could have been no doubt that the deceased was going to make use of the "kris" in an instant. It would not have been reasonable for him to wait until he had been struck with the "kris," before firing, for then he would have been disabled or dead himself. It was a matter of a second who should attack first, and it was only fortunate for the accused that he was able to forestall the fatal in-

tention of the deceased. The accused having used reasonable means to repel the imminent deadly attack by the deceased, and having acted in defense of his father, of his uncle, and of himself, without having offered any provocation, his acquittal is justified.

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Cordova, J.

The facts are stated in the opinion of the Court.

Parreño, Parreño, Flores & Carreon for appellant.

Assistant Solicitor General Torres and *Solicitor Villamor* for appellee.

JUGO, J.:

Fernando, Juan and Romeo, all surnamed Javier, were charged with the crime of murder before the Court of First Instance of Occidental Negros. After trial, Fernando and Juan were acquitted, and Romeo Javier was sentenced to suffer from six (6) months and one (1) day of *prisión correccional* to six (6) years and one (1) day of *prisión mayor*, to indemnify the heirs of Ildefonso Lozada in the sum of ₱2,000, without subsidiary imprisonment in case of insolvency, and to pay one-third (1/3) of the costs. From said judgment Romeo appealed.

Both the counsel for the appellant and the Solicitor General agree that the findings of fact made by the trial court are substantially correct. They also agree that the judgment appealed from should be reversed and the appellant Romeo Javier acquitted.

Said facts may be set forth briefly as follows:

At about 11:30 o'clock in the morning of October 12, 1946, Doroteo Lozada visited his cousin-in-law Fernando Javier in Hacienda Bernardita in the municipality of Cadiz, Occidental Negros, for the purpose of borrowing two cavans of corn. Fernando told him that he could not furnish him that amount for he had already promised to lend a great portion of his corn to his brother Juan Javier, who had personally come for that purpose and another part to his brother-in-law Norberto Beria. Doroteo, disappointed, went down the house and called Fernando to come down. When Fernando had come down, Doroteo repeated his request. In order to appease Doroteo, Fernando offered to give him five gantas, but Doroteo resented the fact that Fernando had loaned to others a greater amount than he was disposed to loan him. He thereupon struck Fernando with his fist, which missed. A fist fight ensued between the two. Primitiva Bagaman, wife of Fernando, upon seeing the fight, shouted for help. Juan Javier, who was in the house, came down and separated the two combatants. Doroteo, however, had been hit on the left eye, which was blackened. Fernando

apologized to Doroteo, who hurriedly mounted his horse and returned home.

Fernando, Juan, Romeo (son of Fernando) and Primitiva Bagaman at noon took their luncheon in the house. After the luncheon Fernando went under the kitchen of their house to feed the hogs, while Juan began shelling corn inside the house and Romeo lay down to sleep. After a few minutes Crescenciano Lozada, son of Doroteo, arrived. In an arrogant tone he told Fernando that his father, who was on the side of the road, wanted to speak to him. But without waiting for his answer, Crescenciano held Fernando by the back collar and dragged him to the place where Doroteo was standing. When Fernando arrived in front of Doroteo, the latter aimed at him his carbine, Exhibit D. Fernando, scared, grasped the barrel of the carbine and tried to snatch it away from Doroteo. In the course of the struggle the gun exploded, the bullet hitting the ground. Crescenciano struck Fernando with his rifle (Exhibit H), but missed and the butt of the rifle broke upon hitting the ground.

When Juan heard the report of the gun he took a "kris," which was in the house, and rushed downstairs. There he saw the struggle between Doroteo and Crescenciano, on the one hand, and Fernando on the other. At this moment Ildefonso, armed with a carbine, and Regalado, sons of Doroteo, accompanied by a laborer named Aurelio, arrived and forthwith assailed Juan. Romeo Javier, the appellant, who had been awakened by the report of the gun, rushed to the scene of the combat. When he arrived there, his father had succeeded in wresting the carbine (Exhibit D) from Doroteo, but Crescenciano struck the head of Fernando with his automatic rifle, rendering him unconscious and causing him to release the carbine which he had wrested. Romeo then picked up said carbine (Exhibit D). Crescenciano rushed at Romeo with the intention to strike him with the barrel of his automatic rifle, but Romeo fired a shot hitting Crescenciano on the chin, the bullet passing through his brain and killing him on the spot.

When Doroteo saw his son fall dead, he rushed at Romeo to take possession of the carbine. Romeo fired at him, hitting him on the head and killing him instantly.

Meanwhile Juan Javier was fighting with Ildefonso, Regalado and Aurelio. Juan held Ildefonso by the neck. Regalado took the carbine from Ildefonso and with it struck Juan on the forehead, while someone hit Juan in the back. As a result of this, Juan fell. As Ildefonso was about to pick the "kris" which had fallen from the hand of Juan, Romeo forthwith fired at Ildefonso hitting the latter in the middle part of the arm, the bullet passing

through his body, as a consequence of which Ildefonso fell dead. Later on, Regalado, carrying the barrel of the carbine and leaving behind its butt, which had been broken (Exhibit F), fled from the scene with Aurelio. Romeo then delivered the carbine (Exhibit D) to his father and went to the *poblacion* to report the matter to the police.

The trial court acquitted Romeo of the deaths of Crescenciano and Doroteo, but convicted him of homicide for that of Ildefonso Lozada, with the two mitigating circumstances of incomplete self-defense of a relative and obfuscation. It will be noted, however, that Romeo fired at Ildefonso when the latter was about to pick up the "kris" which had fallen from the hand of Juan. It is unnecessary to say that a "kris," a Moro weapon, is very deadly, even as deadly at closs range as a firearm. In the mind of Romeo there could have been no doubt that Ildefonso was going to make use of the "kris" in an instant. It would not have been reasonable for him to wait until he had been struck with the "kris" before firing, for then he would have been disabled or dead himself. It was a matter of a second who should attack first, and it was only fortunate for Romeo that he was able to forestall the fatal intention of Ildefonso.

It is logical to conclude that Romeo used reasonable means to repeal the imminent deadly attack by Ildefonso. He acted in defense of his father, of his uncle, and of himself, without having offered any provocation.

In view of the foregoing, judgment is hereby rendered reversing the judgment appealed from and acquitting the accused Romeo Javier, with costs *de officio*. It is so ordered.

De la Rosa and Rodas, JJ., concur.

Judgment reversed and defendant acquitted.

[No. 1177-R. Octubre 22, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra*
EMILIANO REYNANTE, acusado y apelante

1. DERECHO PENAL; LIBELO; PUBLICACIÓN DE CARÁCTER LIBELOSO; CASO DE AUTOS.—El acusado, al publicar el artículo de autos, pretende que sólo hizo eco de un clamor general contra la administración de la Rice Growers Association de General Trias, Cavite. Mas, sea verdad o no que habia quejas contra los que manejaron dicha asociación, la forma en que el escribió la publicación, llamando "Rice Killers" a los que manejaron la referida asociación y atribuyendoles maliciosamente la perdida considerable de cavañes de palay y de las acciones de sus socios, les exponía, sobre todo al ofendido, al odio, animosidad y desprecio del público en general y de los que padecieron hambre en particular. Esta clase de publicación es de carácter libeloso, per se. (Véase: *Jerald vs. Huston*,—Kan—242 Pac. Rep., 472;

Ballentine Law Dictionary, p. 752; 25 Words and phrases, pp. 111-113; El Pueblo de Filipinas *contra* Marcelo R. Cabayan, Vol. 40, Off. Gaz., 5th Supplement p. 163, 165; Pedro M. Blanco *contra* El Pueblo de Filipinas, Vol. 40, Off. Gaz., No. 9th Supplement, p. 248, 254.)

2. ID.; ID.; PRUEBAS; VERACIDAD DE LA IMPUTACIÓN, INADMISIBLE; EXCEPCIÓN EN CUANTO A FUNCIONARIOS PÚBLICOS OFENDIDOS; ARTÍCULO 361, CÓDIGO PENAL REVISADO; CASO DE AUTOS.—No siendo el ofendido, un funcionario público, ni empleado del Gobierno en la época de la publicación del artículo de que se trata, es inadmisile toda prueba tendente a establecer la verdad de los actos imputados a la parte ofendida en el caso de autos (Tumang *contra* El Pueblo de Filipinas, Tomo 2, Gac. Of. No. 1 [Enero, 1943], p. 34).

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Cavite. Santos, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Rizal Adorable en representación del apelante.

El Primer Procurador General Auxiliar Sr. Gianzon y el Procurador Sr. Feria en representación del apelado.

DE LA ROSA, M.:

Emiliano D. Reynante, sentenciado por el Juzgado de Primera Instancia de Cavite a pagar ₱200 de multa, más las costas, por el delito de libelo, se alzó para ante este Tribunal.

La publicación, admitida como suya por Reynante, que apareció en el periódico titulado *Aruy*, en su número correspondiente al mes de noviembre de 1945, Exhíbito A, reza:

“ANG ‘RICE-KILLER’ SA HENERAL TRIAS

“Mga mamamayang nasaktan ng gutom noong panahon ng mga Hapones, sa Heneral Trias, Kabiti, dahil sa pinaggalinlangang kalinisan ng pamamahala ng ‘Rice Growers Association’ (Rice Killers), ay naghahanda nga ito ng isang kahilingan na siyasatin ang mga malaki at maliliit na manadyer ng nasabing samahan.

“Nang tanunging ng isang kinatawan ng ARUY kung ano-ano ang katiwaliang dapat na siyasatin, ay sumagot ng ‘aba eh di iyong pong manadyer ng samahan na totoong magaling sa pamamahala sa alin mang bagay na kapag hindi na siya ang manadyer ng samahan ay hindi na mabuti ang samahan (sangayon sa kanya) at kung siya naman ang manadyer ay, ayun, napakaraming kabang bigas ang nawala at pati aksyon ng mga kaanib ay nawala na rin.”

Los que recibieron este periódico, de circulación general en la Provincia de Cavite y esta Ciudad de Manila, comprendieron, al leer dicho suelto “Ang ‘Rice Killer’ sa Heneral Trias”, que se refiere a Sulpicio Olimpo, porque la “Rice Grower Association”, que se menciona en este suelto tuvo por manager, primeramente al abogado Miguel Trias, de alta estatura, y después a Sulpicio Olimpo, que es bajo y el que más tiempo ha manejado la referida asociación y es particularmente conocido en el pueblo de General Trias y los municipios vecinos con el nombre de manager,

por estar al frente de dos compañías de transportación, llamados Toledo Transportation Company y Tagaytay Transportation Company. Sin ninguna duda entendieron que era contra él esta publicación, tanto que algunos de sus amigos, entre ellos el abogado Viniegra, en la mañana del 2 de noviembre de 1945 fué a su casa para demostrarle el número del *Arny* que lleva ese artículo "Ang 'Rice Killers' sa Heneral Trias."

Al hablar del motivo porque escribió el suelto "Ang 'Rice Killer' sa Heneral Trias," el acusado dijo:

"P. Demonstrandole a usted este Exhibit A que obra al folio 6 del expediente, puede usted explicar al Honorable Juzgado las circunstancias por las cuales usted publicó este artículo que encabeza el Rice Killer en General Trias? R. Cuando llego la liberación como queriendo decir que la gente de General Trias tenía o tuvo la libertad de decirlo que sentían de los agravios, me percaté que la gente quería investigar el manejo de la Rice Grower Association durante el tiempo de la ocupación Japonesa. Yo como de General Trias, sabía también de algunas que la Association haya hecho. Encontré una vez con el Sr. Casiano Torres y éste me dijo que la gente de General Trias estaba pensando de presentar una denuncia contra la administración del Rice Grower Association." (T.n.t. p. 90)

Con este testimonio, Reynante pretende que sólo hizo eco de un clamor general contra la administración de la Rice Growers Association de General Trias. Mas, sea verdad o no que había quejas contra los que manejaron la Rice Grower Association de General Trias, la forma en que él escribió esta publicación, llamandoles "Rice Killers" y atribuyendoles maliciosamente la perdida considerable de cavanos de palay y de las acciones de sus socios, les exponía, sobre todo al ofendido Olimpo, al odio, animosidad y desprecio del público en general y de los que padecieron hambre en particular. Esta clase de publicación es de carácter libeloso, per se.

"Written or printed words are libelous *per se* if they are so obviously hurtful to the person aggrieved by them that they require no explanation of their meaning and no proof of their injurious character to make them actionable." [(Jerald vs. Huston,—Kan—, 242 Pac. Rep., 472) Ballentine Law Dictionary, p. 752]

"An article designed and calculated to exhibit plaintiff as a shallow, ridiculous, and contemptible person, dishonest and undeserving of confidence, is libelous *per se*. Morse vs. Times-Republican Printing Co., 100 N. W. 867, 869, 124 Iowa, 707." (25 Words and Phrases pp. 111-113)

"LIBELO; COMUNICACIONES PRIVILEGIADAS; PUBLICIDAD INNECESARIA; FINES JUSTIFICABLES.—Aunque fuera de carácter privilegiado la comunicación difamatoria, el proceder del acusado dando la mayor publicidad posible a la expulsión del ofendido de la Iglesia de Cristo Jesús y de los motivos que dieron margen a la misma, y el hecho de haberse insertado en el periódico *Mabuhay* un artículo donde se hacía referencia a dichos motivos, artículo que naturalmente tenía que ser leído no sólo por los miembros de dicha organización religiosa sino también por el público en general, siendo dicha publicación enteramente innecesaria, arguyen poderosamente en contra de lo alegado que el acusado obró con buena intención, con plausibles mo-

tivos y con fines justificables." (El pueblo de Filipinas *contra* Marcelo R. Cabayan, Vol. 40, Off. Gaz., 5th Supplement p. 163, 165)

"DERECHO PENAL Y PROCEDIMIENTO CRIMINAL; DIFAMACION POR ESCRITO; CASO DE AUTOS.—El artículo de que se trata, conteniendo como contiene además de una fuerte insinuación, una imputación clara de haberse prestado el ofendido, de instrumento para una práctica prohibida por la ley, es per se, difamatorio. Dicho artículo presenta, además al ofendido como un hombre sin escrúpulos y sin apego alguno a las cosas que se han ideado precisamente para proteger la vida económica del país. Este acto que se le atribuya es tan difamatorio como el atribuirle los otros actos ya mencionados, porque le pone en ridículo y le hace aparecer despreciable a los ojos de sus conciudadanos, redundando ello, naturalmente, en su propio deshonor, descredito y menosprecio." (Pedro M. Blanco *contra* El Pueblo de Filipinas, vol. 40, Off. Gaz., No. 9th Supplement, pp. 248, 254.)

El apelante relaciona en su alegato que el Juzgado *a quo* erró:

"3. In not allowing the defense to prove the truth of the imputation contained in the article, Exhibit A-1."

El Procurador General cita el segundo párrafo del artículo 361 del Código Penal Revisado, que dice:

"Proof of the truth of an imputation of an act or omission not constituting a crime shall not be admitted, unless the imputation shall have been made against Government employees with respect to facts related to the discharges of their official duties."

Olimpo no era funcionario, ni empleado del gobierno en la época de la publicación del artículo de que se trata, y en *Salvador C. Tumang vs. People of the Philippines*, el Tribunal Supremo sentó esta doctrina:

"LIBEL; INADMISSIBILITY OF PROOF OF THE TRUTH OF THE IMPUTATIONS NOT CONSTITUTING A CRIME; ARTICLE 361 OF THE REVISED PENAL CODE.—Proof of the truth of those acts imputed to the offended party which do not constitute a crime cannot be admitted, since he is not a government employee, and, consequently, none of those imputation can have any reference to facts related to the discharge by a government employee of his official duties. This is in consonance with the second paragraph of article 361 of the Revised Penal Code which limits the scope of the general rule set forth in the first paragraph of the same article." [Vol. 2, Off. Gaz., No. 1 (January, 1943) p. 34.]

Se confirma en todas sus partes la sentencia de que se apela, con las costas al apelante. Así se ordena.

Jugo y Rodas, MM., están conformes.

Se confirma la sentencia.

[No. 1501-R. October 22, 1948]

JOAQUIN V. BASS, plaintiff and appellant, *vs.* REBECCA LEVIN, defendant and appellee

EVIDENCE; DOCUMENTS; DETERMINATION OF GENUINENESS AND AUTHENTICITY OF DOCUMENTS; EXPERT EVIDENCE NOT ALWAYS NECESSARY.—Courts do not always have to resort to and rely upon expert evidence to determine the genuineness and authen-

ticity of a document. The court may base its decision upon the result obtained by comparing the questioned document or signature with other writings or signatures admitted or treated as genuine and authentic (Sec. 50, Rule 123, Rules of Court; *U.S. vs. De la Cruz* 28 Phil., 279), and it has been held in this connection that when the writing in question and the handwriting admitted or proven to be genuine are identical, the former may be considered as authentic (*Cho Chun Chas vs. Garcia* 47 Phil., 530; *Alejandro vs. Reyes* 53 Phil., 974; *Sy Tiangco vs. Pablo* 59 Phil., 122; *Enrile vs. Roberto* 61 Phil., 603; *People vs. Silvallana* 61 Phil., 641).

APPEAL from a judgment of the Court of First Instance of Manila. Ocampo, J.

The facts are stated in the opinion of the court.

Jose S. Sarte for appellant.

Jose Palarca for appellee.

DIZON, J.:

This action was commenced in the court below to recover possession of certain personal properties described in a chattel mortgage allegedly executed by the appellee in favor of the appellant on April 8, 1944. The appellee denied under oath the genuineness and due execution of the alleged chattel mortgage and denied further that she had ever received from the appellant the loan in the sum of ₱5,000 referred to therein. By way of counterclaim she further alleged that at about the end of the year 1943 or during the early months of 1944 the appellant, through fraudulent representations, succeeded in making her affix her signature to a document authorizing him, as broker, to sell her property located at 326 San Rafael, Manila for the sum of ₱50,000, with part of which he would help her acquire another property at Antonio Rivera Street, as a result of which she sustained damages in the sum of ₱10,000. After due trial the lower court dismissed the complaint as well as the counterclaim from which judgment only the plaintiff appealed contending that the lower court committed the following errors:

I

"The lower court erred in its finding that there was no necessity on the part of notary public, Atty. Eleizer Manikan, to read and interpret the contents of the contract of chattel mortgage to the defendant, Rebecca Levin.

II

"That the lower court erred in its finding that the defendant had no necessity to obtain a loan of ₱5,000 from the plaintiff for the simple reason that before the execution of the chattel mortgage in question, said defendant obtained from the plaintiff the sum of ₱95,000.

III

"That the lower court erred in its finding that the signatures of Rebecca Levin appearing in the contract of chattel mortgage in question are not hers, which conclusion is based upon mere comparison

and the omission of one letter in the first name of said defendant, and therefore, is a conclusion which is undoubtedly uncertain, unsafe and flimsy when it comes to the determination of the genuineness or validity of a public document.

IV

"That the lower court erred in its finding that the contradictions in the testimony of the notary public, Mr. Manikan are sufficient to dismantle the virtuality, genuineness or validity of a public document."

The decisive question involved in this case is whether or not the chattel mortgage in question is a forgery. Regarding the same the well considered decision of the trial court says:

"Después de considerar detenidamente las pruebas presentadas por una y otra parte, el Juzgado ha llegado a la conclusión de que el peso de las mismas milita en favor de la demandada, en el sentido de que se debe dar crédito a su testimonio, al efecto de que élla no ha tomado, en concepto de préstamo, ninguna suma del demandante, ni ha otorgado ni ratificado el documento Exhibit A, ni son suyas las firmas que aparecen en el mismo con el nombre de Rebecca Levin."

"Para llegar a esta conclusión, el Juzgado ha tenido en cuenta estas consideraciones:

"(1) Si la demandada, como élla, afirma, no sabe leer ni escribir más que su firma 'Rebecca Levin' (cuyo testimonio sobre este respecto no ha sido contradicho ni enervado en manera alguna), qué necesidad tenía élla, como pretende el notario Sr. Manikan, de aparentar o tratar de leer el documento Exhibit A cuando dicho notario se le entregó para su firma, después de explicarle el contenido del mismo?

"(2) Si es verdad, como pretende el demandante, que la demandada, algunos días antes del otorgamiento del supuesto documento de hipoteca Exhibit A, había recibido del demandante la suma total de ₱95,000 como precio de venta de dos fincas de la demandada, el Juzgado se resiste a creer que élla, algunos días después, tuviese necesidad de contraer un préstamo de ₱5,000, hipotecando a este efecto, para asegurar el cumplimiento de su obligación, los muebles descritos en el documento Exhibit A, inclusive aquellos que ya no eran de élla ni los tenía en su poder, por haberlos dispuesto mucho antes de la fecha del supuesto otorgamiento de dicho documento.

"(3) Si fuera cierto que el documento, como él pretende, concedió a la demandada el alegado préstamo de ₱5,000 en moneda legal corriente ("lawful local currency"), entregándole ₱1,600 en moneda filipina, y 3,400 pesos en billetes militares japoneses, sabiendo, como él sabía, que el cambio prevaeciente en aquella época (1944) era de 100 a 200 pesos, moneda militar japonesa, por cada ₱1, moneda filipina; y admitiendo que el cambio a la sazón no fuera más que 100 pesos, moneda filipina japonesa, por cada ₱1, moneda filipina, tendríamos que concluir que el demandante estaba consciente de que el préstamo total concedido a la demandada era de ₱153,400, moneda militar japonesa; sin embargo, él se conformó y consideró solamente como importe de la hipoteca la cantidad de 5,000 pesos, moneda militar japonesa (pág. 68, t. n. t.) tal como consta en el documento Exhibit A. Esta supuesta liberalidad del demandante está en pugna con el curso ordinario de las cosas, sobre todo si se tiene en cuenta su propio testimonio, al efecto de que él no registró inmediatamente el documento de hipoteca en el Registro de la Propiedad porque él esperaba que la demandada cumpliera su promesa de devolverle muy

pronto (very soon; pag. 64 t.n.t.) el importe del préstamo (5,000 pesos, moneda militar japonesa); de tal modo que si la demandada hubiera pagado al demandante el importe del préstamo de 5,000 pesos, moneda militar japonesa, en la fecha prometida o durante la ocupación japonesa, el demandante hubiese perdido entonces en aquella transacción la respetable suma de 158,400 pesos, moneda militar japonesa, lo cual es absurdo, teniendo en cuenta el celo con que el demandante velaba por sus intereses, como así lo demuestra el hecho de haber por fin registrado el documento de hipoteca en el Registro de la propiedad el 19 de diciembre de 1944, cuando veía que la demandada no cumplía su promesa de saldar su obligación. Si la demandada había recibido del demandante, en concepto de préstamo, ₱1,600, moneda filipina, y 3,400 pesos, moneda militar japonesa, y sabiendo como élla debía saber que podía pagar esta obligación con 5,000 pesos en dinero japones, por qué no pagó élla esta obligación en la época en que debía pagar, para ganar de ese modo 158,400 pesos, moneda militar japonesa, en aquella transacción? Por qué tuvo élla que esperar el tiempo en que dejaren de valer los billetes militares japoneses, para pagar después los 5,000 pesos, moneda militar japonesa, ₱5,000, moneda filipina, teniendo, como élla tenía entonces 95,000 pesos en billetes militares japoneses?

"(4) El supuesto pagaré copiado en el Exhibit A no se ha presentado durante el juicio como prueba para sostener la contención del demandante, ni se ha dado explicación alguna de su omisión.

"(5) No se ha presentado por ninguna de las partes calígrafo para determinar la legitimidad o autenticidad de las firmas que aparecen en el documento Exhibit A con el nombre de 'Rebecca Levin.' Sin embargo, un simple exámen y comparación de las mismas con las firmas auténticas de la demandada que constan en su contestación (páginas 19 de autos), en la orden de embargo (pág. 27, autos), en la diligencia del Shériff al levantar el secuestro de los bienes embargados (págs. 32 y 33, autos) y en el cumplimiento del Shériff (pág. 48, autos), demuestran claramente que dichas firmas que aparecen en el Exhibit A con el nombre de 'Rebecca Levin' no fueron hechas por la misma demandada, no solo por estar escrito el nombre "Rebecca" con una sola 'c' sino además porque las letras mayúsculas 'R' y 'L' con que empiezan el nombre 'Rebecca' y el apellido 'Levin', respectivamente, están trazadas de manera distinta de como la demandada acostumbra trazar dichas letras al firmar su nombre y apellido.

"(6) Las aparentes contradicciones que el Juzgado ha notado en el testimonio del notario Sr. Manikan y los errores que el mismo ha admitido haber cometido en la redacción o confección del documento Exhibit A, hacen que el Juzgado ponga en tela de juicio el debido otorgamiento del mismo y se reafirma en su convicción de que la demandada no ha contraído el préstamo cuyo cobro se reclama en la demanda."

After carefully going over the testimonial evidence and comparing the alleged signatures of the appellee appearing on pages 2 and 3 of the chattel mortgage Exhibit A with her admittedly genuine signatures appearing in her answer (p. 19 of the original record), in the order for the seizure of personal properties issued by the lower court on November 24, 1945 (Id. p. 27), in the return of the sheriff dated November 28, 1945 (Id. pp. 32-33) and in the return of the sheriff dated March 7, 1946 (Id. p. 48), we are constrained to hold that the conclusion arrived at by the trial court is correct.

It is not always that Courts have to resort to and rely upon expert evidence to determine the genuineness and authenticity of a document. The court may base its decision upon the result obtained by comparing the questioned document or signature with other writings or signatures admitted or treated as genuine and authentic (sec. 50, Rule 123, Rules of Court; *U.S. vs. De la Cruz* 28 Phil. 279), and it has been held in this connection that when the writing in question and the handwriting admitted or proven to be genuine are identical, the former may be considered as authentic (*Cho Chun Chas vs. Garcia* 47 Phil., 530, *Alejandrino vs. Reyes* 53 Phil., 974, *Si Tiangco vs. Pablo* 59 Phil., 122, *Enrile vs. Roberto* 61 Phil., 603, *People vs. Silvallana* 61 Phil., 641). We may therefore say, a *sensu contrario*, that when the questioned writing and the handwriting admitted to be genuine are entirely different, the former may be considered as forged. Speaking concretely of the case now before us, one need not be a handwriting expert to say that the signatures of the appellee appearing on the different pages of the original record mentioned heretofore, which we have presently before us, are very different from the alleged signatures of the same party appearing at pages 2 and 3 of the questioned chattel mortgage. For one thing, appellee's christian name appears correctly and uniformly written with double 'cc' on the pleadings and processes mentioned heretofore, while it appears written with a single 'c' in the questioned document. On the other hand, all the letters composing appellee's surname are correctly, clearly and distinctly written on the aforementioned pleadings and processes, while in the questioned signatures the last letter of the surname 'Levin' appears to be more like an 's' or an incomplete 'n'. Lastly, there can be no doubt that, in their general appearance and circumstances, the questioned signatures are very different from the genuine ones.

Furthermore, as the trial court correctly observed, if it is true, as appellant himself claims, that a few days before the alleged execution of the chattel mortgage the appellee had actually received from him the total sum of ₱95,000 in connection with the sale of two of her properties, there would seem to be absolutely no reason why a few days later she should be so hardup that she had to borrow from him the sum of ₱5,000 securing the payment thereof with a mortgage on all the personal properties found in her house. If to all this we add the circumstance that the appellant failed to produce the alleged original or at least a copy of the promissory note copied in the chattel mortgage—promissory note which, in our opinion, does not really exist, notwithstanding appellant's contention to the contrary, because otherwise no attempt would have been made to make it appear that the appellee had also signed

the promissory note *copied* in the chattel mortgage—and if we consider further that the appellee, according to the evidence, is 68 years of age and so ignorant that all she can write is her own name, one cannot escape the conclusion that the signatures on the questioned chattel mortgage are not really hers and that she had never received from the appellant the loan mentioned therein.

Wherefore, finding the appealed judgment to be supported by the evidence and in accordance with law, the same is hereby affirmed, with costs.

Concepcion and De Leon, JJ., concur.

Judgment affirmed.

[No. 1720-R. October 25, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
FERNANDICO PASION and RUFINO LOBERINTO, defendants. FERNANDICO PASION, defendant and appellant.

CRIMINAL LAW; THEFT; ASTRAY ANIMAL, RETAINING POSSESSION OF; CASE AT BAR.—While it may be true, as alleged by counsel, that the accused had not taken away the carabao in question from the owner thereof, because they merely found it astray, still, having retained it in their possession, knowing it did not belong to them, and instead of bringing the matter to the police authorities, they branded anew the animal and after securing a new certificate of ownership thereof they slaughtered it and sold its meat in the market, the crime of theft had been committed by them. (*People vs. Rizano*, G.R. No. 5291, Aug. 31, 1940.)

APPEAL from a judgment of the Court of First Instance of Isabela. Arranz, J.

The facts are stated in the opinion of the court.

Juan Bigornia for appellant.

Assistant Solicitor-General Barcelona and *Solicitor Umali* for appellee.

PAREDES, J.:

Fernandico Pasion and Rufino Loberinto were charged with theft of large cattle in the Court of First Instance of Isabela. Rufino pleaded guilty and was sentenced accordingly. From a judgment, finding him guilty of the crime charged and sentencing him to suffer an indeterminate penalty ranging from one (1) year, seven (7) months and ten (10) days of *prisión correccional* to six (6) years, one (1) month and ten (10) days of *prisión mayor*, with the necessary penalties prescribed by law, and to indemnify, jointly and severally, with his codefendant Rufino Loberinto, the complainant in the amount of ₱200, and to pay the costs, Fernandico interposed this appeal and alleged that the trial court erred in having convicted him and ordered him to indemnify the offended party in the said sum.

It appears that in November, 1945, Timoteo Mina acquired by barter a male carabao worth P200 from Eugenio Valiente who had previously acquired the same, also by barter, from Santiago Arellano, with certificate of ownership, Exhibit B, which is still in the latter's name; that sometime in December, 1945, the said carabao disappeared in barrio Minalloc, Naguilian, Isabela; that the complainant's efforts to locate the whereabouts of the said animal proved futile, until February, 1946, when Simplicio Gutierrez, son in law of Eugenio, saw the carabao in the possession of Fernandico who offered to sell it to him; that Simplicio informed Timoteo about it, and on the following morning the two, with Eugenio, went to the house of Fernandico in *sitio* Tacop, of the same town, where the head and hide of a carabao recently slaughtered were found; that as Fernandico was then in the town market, selling the carabao's meat, the three examined the cowlicks and brand appearing thereon and found them to tally with the marks and description of the lost carabao of Timoteo, although a new brand had been superimposed upon the old brand; that Timoteo went to the town and saw Fernandico selling meat in the market, and, upon being asked by Timoteo regarding the carabao, he remarked he slaughtered it, not knowing it was Timoteo's carabao; that the chief of police, after the proper investigation, took Fernandico's statement in writing, Exhibit A, which was subscribed and sworn to before the Justice of the Peace of Naguilian; that in said Exhibit A, Fernandico admitted that on the night of February 13, 1946, he and Rufino caught a carabao of unknown owner; that it was agreed by them that he would sell the carabao; that he delivered the sum of P60 in advance, as Rufino's share; that he re-branded the said carabao with G.B., the mark of Gabriel Bueno and secured a certificate of ownership which was later transferred in his name; and that after obtaining a permit, he slaughtered the animal and sold its meat.

The only question to determine in this appeal, is whether or not the appellant participated in the commission of the offense. There is no dispute with respect to the fact that in December, 1945, the carabao of Timoteo disappeared, and that on February 20, 1946, the said animal was slaughtered, and its meat sold, by the appellant. There is no doubt in our mind that the appellant took part in the taking away of the said carabao, by directly helping his co-accused Rufino to catch it; and that he gave Rufino P60 as his share. Exhibit A, appellant's confession, the voluntariness of which was not impugned by the defense, is, in this particular case, a proof of high order. The trial court completely rejected the claim of appellant that he bought the carabao from Rufino in the sum of P60; and after a careful consideration of the evidence of record, we find no

reason to disturb said conclusion. In Exhibit A, no mention whatsoever was made by appellant of the alleged purchase of the carabao in question from Rufino. On the other hand, he stated that the amount of ₱60 was given by him to Rufino as the latter's share in the sale of the carabao; in other words, the appellant simply reimbursed Rufino for the latter's share, so that appellant could have the entire proceeds of the sale thereof. The assertion of Rufino that he sold the said carabao to appellant, is also incredible, because in his written admission, Exhibit C, he merely stated that the ₱60 which he received from the latter was his share in the sale of the carabao. The fact that Rufino had pleaded guilty to the offense charged, clearly indicates that the story contained in Exhibit C is a true one. Moreover, the alleged sale of the carabao from one accused to the other, does not have any justification at all, when one takes into account the fact that the seller was not the owner thereof. While it may be true, as alleged by counsel, that they had not taken away the animal in question from the owner thereof, because they merely found it astray, still, having retained it in their possession, knowing it did not belong to them, instead of bringing the matter to the police authorities, the crime of theft had been committed by them. (People *vs.* Rizano, G. R. No. 5291, August 31, 1940.) In this particular case, the presence of *animus lu-cr-andi* is evident. The alleged sale was made by Rufino in a field at 8:00 o'clock in the evening. Rufino suggested that the appellant should brand anew the animal and secure a certificate of ownership or large cattle in his name. As suggested, appellant rebranded the said carabao, by superimposing the mark G.B. (Gabriel Bueno) on the original private brand S.A. of Santiago Arellano, without the knowledge of the branding officers of the municipality. A sale made in an isolated place and under the cover of darkness, of an animal not belonging to the seller, and the rebranding of the said animal by the alleged buyer with another mark, not pertaining to the original owner, without the knowledge and authority of the corresponding branding officers of the Government, breeds suspicion and misgivings. "The fact that the cow was found in the possession of the appellant who placed his brand on top of the original brand of the owner thereof, and that he failed to satisfactorily explain how he came into possession of the cow, are sufficient to establish his guilt of the crime of theft." (People *vs.* Incilay et al., G. R. No. 739, Dec. 23, 1936.) Lastly, the extrajudicial confession of the appellant, not disproved by him during the trial, had been substantiall corroborated.

The offended party, testifying, said:

"Q. Did you not receive a female carabao from him?—A. I received it.

"Q. Did you receive it in exchange of the carabao in question?—A. Yes, sir.

"Q. Now, having received that carabao in exchange of the carabao in question, do you still claim indemnity in this case?—A. No more."

Inasmuch as the offended party had already received in full satisfaction for his damage, another carabao from one of the accused, and as this is one of those rights which may be waived by the offended party in a criminal case, we agree with counsel for the defense that the trial court erred in sentencing the appellant to indemnify the complainant herein in the amount of ₱200.

The Court, therefore, finds the appellant Fernandico Pasion guilty beyond reasonable doubt of the crime charged; and, there being no modifying circumstance to appreciate, in accordance with article 310 of the Revised Penal Code, as amended, in connection with case No. 4 of article 309 of the same Code, imposes upon him an indeterminate penalty which ranges from one (1) year, seven (7) months and ten (10) days of *prisión correccional* to six (6) years, eight (8) months and one (1) day of *prisión mayor*, without express pronouncement as to indemnity, and to pay the proportionate costs.
So ordered.

Labrador and Barrios, JJ., concur.

Judgment modified.

[No. 1855-R. October 25, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
PEDRO CAMPOMANES, accused and appellant

1. CRIMINAL LAW; HOMICIDE THROUGH RECKLESS NEGLIGENCE; OFFENSE CONSTITUTES VIOLATION OF MOTOR VEHICLE LAW [SECTION 67(d) OF ACT NO. 3992].—The violation committed by the defendant through negligence or reckless or unreasonable fast driving of a motor vehicle resulting in death or serious bodily injury is punishable under section 67(d) of Act No. 3992, the Motor Vehicle Law, rather than the corresponding provision of the Revised Penal Code. (*People vs. Moreno*, 60 Phil., 712.)
2. PLEADING AND PRACTICE; NEW TRIAL, MOTION FOR; WITNESSES' TESTIMONY, IMPROPER GROUND FOR NEW TRIAL.—Testimony of witnesses of an impeaching character (*U.S. vs. Luzon*, 4 Phil., 343, 346; *U.S. vs. Lee Cheng Pee*, 39 Phil., 466, 469) as well as cumulative testimony cannot be grounds for new trial (39 Am. Jur., 176; *U. S. vs. Luzon, supra*; *U. S. vs. Pico*, 15 Phil., 549, 553).

APPEAL from a judgment of the Court First Instance of Rizal. Tan, J.

The facts are stated in the opinion of the court.

Leon Guinto, Jr. for appellant.

First Assistant Solicitor-General Gianzon and Solicitor Umali for appellee.

JUGO, J.:

Pedro Campomanes was accused before the Court of First Instance of Rizal for the crime of homicide through reckless imprudence. After trial he was found guilty and sentenced to suffer from four (4) months of *arresto mayor* to one (1) year and one (1) day of *prisión correccional*, to indemnify the heirs of the deceased in the sum of ₱2,000, with subsidiary imprisonment in case of insolvency, and to pay the costs. The defendant appealed.

On July 15, 1947, at about 11:30 in the morning, near kilometer 19 of the Manila South Road, three vehicles were running toward Manila in the following order: a truck, a jeep and a bus driven by the accused Pedro Campomanes. They were running at great speed, the jeep trying to overtake and pass the truck and the bus trying to overtake and pass both. A jeep driven by Manuel Lorenzo came on the opposite direction from Manila to Laguna (Sketch, Exhibit G) on the right side of the road toward Laguna.

The ETB bus driven by the accused was trying to overtake and pass the jeep ahead of it which was going to Manila on the right side of the road. In order to do this, the bus turned to the left side of the road toward Manila at a great speed and so it suddenly struck the jeep driven by Lorenzo, which on account of the strong impact turned to the right border of the road throwing overboard Manuel Lorenzo who died on the spot, due to the "shock, intracranial hemorrhage due to traumatic maceration of the brain and fractured skull."

The defendant tried to show that the jeep driven by Manuel Lorenzo was running at a great speed from Manila to Laguna. When it met another jeep coming from Laguna, it turned to the right toward Laguna but it reached the soft shoulder of the road, so it abruptly turned to the left, and in that manner it struck the bus driven by the accused.

The witness for the defense Reynaldo Villarosa testified as follows:

"R. Mientras corría nuestro truck, en la delantera del cual había un jeep y otro truck, el jeep trató de adelantarse del truck y en ese momento venía un jeep en dirección contraria y torció la manivela hacia el lado derecho hasta llegar al 'soft shoulder of the road' y para poder recuperar su puesto en el camino torció otra vez al lado izquierdo, pero ocupó un puesto más de lo que debía ocupar y chocó contra el bus." (P. 67, t.s.n.)

The accused testified as follows:

"P. Recuerda usted si ocurrió algún suceso extraordinario en ese día?—R. Sí, señor, después de habernos pasado el fuente (puente) de Alabang yo seguía con un jeep que también seguía con un truck; el jeep trató de adelantarse del truck y al tratar de adelantarse al truck se encontró con otro jeep que venía en dirección contraria y este jeep torció al lado derecho y cuando me dí cuenta ya chocó contra mi truck." (P. 69, t. s. n.)

While the version given by Villarosa is not physically impossible it is very unlikely, because the jeep driven by Lorenzo could have avoided the jeep going to Manila without going to the soft shoulder of the road, but even if it went to that side, still in going to the hard part of the road it was not necessary for it to strike the bus driven by the accused, which according to the accused was on the proper side of the road. The version given by the accused himself is unbelievable because if the jeep managed by Lorenzo turned to the right side, it could not have collided with the bus driven by the accused. The defendant was inspired by the racing spirit; not wanting to be behind two cars he tried to overtake and pass them—a very common occurrence on the highways—without foreseeing that a vehicle might be coming in the opposite direction, which he did not notice in his hurry to pass the two other vehicles. Thus, he said: “cuando me dí cuenta ya chocó contra mi truck.”

The witness of the defendant Odis Bineheart testified as follows:

“R. Para evitar el choque contra el jeep, así es que torció hacia el lado derecho.

“P. Y cuando llegó el truck al borde de la calle, qué hizo?—R. El chofer torció al lado izquierdo para poder volver en medio de la calle.” (P. 39, t. s. n.)

If the jeep of Lorenzo returned to the middle of the road, why should he have collided with the truck if the latter was on its proper side of the road, according to the accused?

The accused should not have attempted to overtake the two cars ahead of him without ascertaining whether another vehicle was coming from the opposite direction, in accordance with section 58(b) of the Motor Vehicle Law which says:

“A person, or driver, or operator of a vehicle, attempting to overtake and pass persons or vehicles going in the same direction, shall exercise due caution, and shall yield reasonable right of way to persons or vehicles simultaneously attempting to pass in the opposite direction.”

The defendant has filed a motion for new trial based on newly-discovered evidence, offering the testimony of Jose Ignacio, Paulino Garcia, Abdon Cadiente, Alberto Rodriguez and Medardo Lopez. With regard to the proffered testimony of Jose Ignacio and Paulino Garcia, they are only of an impeaching character and cannot be a ground for new trial (U. S. *vs.* Luzon, 4 Phil., 343, 346; U. S. *vs.* Lee Cheng Poe, 39 Phil., 466, 469). As to the testimony of Abdon Cadiente, Alberto Rodriguez and Medardo Lopez, they are simply cumulative, tending to sustain the theory of the defense already testified to by the accused and his witnesses of record. They likewise cannot be ground for new trial (39 Am. Jur., 176; U. S. *vs.* Luzon, *supra*; U. S. *vs.* Pico, 15 Phil., 549, 553).

The violation committed by the defendant comes under section 67(d) of Act 3992, the Motor Vehicle Law and not under article 365 of the Revised Penal Code. The penalty imposed by the trial court is, however, within the range of the penalty imposed by the Motor Vehicle Law, but instead of calling them *arresto mayor* and *prisión correccional* they should be called imprisonment.

In view of the foregoing, as above modified, the judgment appealed from is affirmed in all other respects, with costs against the appellant. It is so ordered.

De la Rosa and Rodas, JJ., concur.

Judgment modified.

[No. 2179-R. October 27, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. PRIMO CUENCO, accused and appellant

1. CRIMINAL LAW; ABDUCTION WITH CONSENT; NON-VIRGINITY OF OFFENDED PARTY AS A DEFENSE; CASE AT BAR.—The contention of the accused that the offended party was not a virgin, for he had sexual intercourse with her about two or three weeks prior to the abduction is untenable and contrary to the doctrine in the case of *U.S. vs. Casten*, 34 Phil., 808 because the interruption of continuity between this act and that of the abduction was not sufficient to negative the object and purpose of the crime, and because, furthermore, the virginity to which article 343 of the Revised Penal Code refers is not to be understood in so material a sense as to exclude the idea of the abduction of a virtuous woman of good reputation.
2. ID.; ID.; ABSENCE OF OFFENDED PARTY FROM HER RESIDENCE NEED NOT BE OF PERMANENT CHARACTER; ALARM CAUSED TO HOUSEHOLD ESSENTIAL.—The contention that there was no character of permanency in the withdrawal of the offended party from her father's house as she returned the next day is likewise untenable. Her disappearance from her parent's house for one night was sufficient to produce great alarm to her father who made frantic efforts to search for her. The case at bar is different from that of *People vs. De la Cruz* (48 Phil., 533) where the accused took the girl for a ride and brought her back to her house after a couple of hours, her absence not having produced any alarm in her housemates. (*People vs. Cabrera*, CA-G.R. No. 228, promulgated May 19, 1947, and *Viada*, Vol. 5, p. 278, 5th Edition.)

APPEAL from a judgment of the Court of First Instance of Samar. Benitez, J.

The facts are stated in the opinion of the court.

Antonio D. Cinco and Donato A. Cardona for appellant.

First Assistant Solicitor-General Gianzon and Solicitor Carreon for appellee.

JUGO, J.:

Primo Cuenco was accused of abduction with consent before the Court of First Instance of Samar. After trial, he was found guilty and sentenced to suffer from six (6)

months of *arresto mayor* to two (2) years, eleven (11) months and eleven (11) days of *prisión correccional*, with the accessories of the law, to indemnify the offended party Olimpia Norombaba in the sum of ₱1,000, and to pay the costs. He appealed.

Primo Cuenco was a widower with two children and the offended party Olimpia Norombaba was a maiden seventeen years and nine months old on March 8, 1946, the date of the abduction. The accused had been courting her for two months prior to said date and she had accepted him. She was living with her father Victorino Norombaba, who was a widower, in his house in *sitio* Tiguib, municipality of Oras, Samar.

In the evening of March 8, 1946, Victorino went out of the house to drink tuba. During his absence, the accused visited Olimpia and tried to persuade her to elope with him that night. She was at first very reluctant but due to the persistence of the accused and his promise to marry her that same night, she followed him. He took her to the house of his aunt in the mountains beyond the cemetery of Oras. When they arrived there his uncle refused to receive them, so the appellant took her to an uninhabited house nearby where they slept and had sexual intercourse. On the following morning he took Olimpia to the house of his aunt and later to that of his sister Maria Cuenco in Oras, where they stayed until Victorino found them in the evening and took them both to his house.

The accused stayed in Victorino's house for three weeks eating there and living with Olimpia maritally. This was allowed by Victorino because the accused promised to marry his daughter. The accused had their marriage bans published in the local church. After the termination of the proclamation, the appellant, taking advantage of the absence of Victorino, who had gone to *sitio* Pongso to gather rice, and on the pretext that he, the accused, was going to the farm of his mother in Agsang to get rice, left Victoriano's house at four o'clock in the morning of March 28, 1946. But instead of gathering rice he hid in his mother's house until he was arrested on April 12, 1946.

In May, 1946, while the accused was out on bail in this case, he abused one Rosario Pagatpatan, a girl about fourteen years old and he was forced by the girl's father to marry her. But in less than three months the father took back his daughter on account of her ill-treatment by the accused.

The defense of the accused is a sort of *alibi* for he testified that for four or five days before March 8, 1946, he was in Agsang constructing a hut to store rice and he returned to his mother's house in Oras at about seven o'clock in the evening of said date.

According to the accused, in that same evening Olimpia left her father's house of her own accord and went to that of Maria Cuenco, sister of the accused, in the same town and there inquired about him. When she was told that he had just arrived she asked Maria to send for him. Maria went to the house of her mother and awoke the appellant who came with her to her house to see Olimpia. Olimpia wanted to marry him, but he replied that he had no money yet and advised her to go back to her home. Olimpia refused to go home because she was afraid of her father. As the accused was also afraid of him, he returned to his mother's house, where he slept while Olimpia stayed in Maria's house. Early the next morning the accused returned to the house of Maria to see Olimpia. He did not have any sexual intercourse with Olimpia on March 8 or 9. He lived maritally with Olimpia in her father's house for three weeks. With the consent of Olimpia he left her house for the purpose of borrowing money from his brothers in Guiuan to defray the marriage expenses. He was able to borrow ₱150 from his brothers there. Unluckily when he came back to Oras from Guiuan on April 12, 1946, at about three o'clock in the afternoon he was arrested and Victorino refused to permit his marriage with his daughter.

The sort of *alibi* set up by the accused that he arrived in Oras only on March 8, 1946, is not an *alibi* at all, because it was in the night of that same date that the crime was committed.

His statement that it was Olimpia who went to the house of his sister Maria to look for him is beyond belief; no decent woman would pursue a man in that way.

The appellant argues that according to the testimony of Olimpia herself she was abducted by means of force and that consequently the abduction was not effected with her consent. If this were so, it would be worse for the accused. But this is not borne out by the record; Olimpia due to her shyness and feminine modesty was at first reluctant to go with the accused, as often happens with women, but upon his insistence and promise of marriage she followed him. Had Olimpia really resisted, it would have been hardly possible for the accused to carry her away.

The testimony of the accused and his witnesses was not given any weight by the trial court, for they are full of glaring contradictions on essential points. We need not point out these contradictions as they are exhaustively dealt with by the court below. Furthermore, from the circumstances of the case it is clear that the accused carried away the girl from her father's house with lewd designs, which he accomplished, and by means of the false promise to marry her, a promise to which he gave all the appearances of sincerity.

The accused tried to show that Olimpia was not a virgin, for he had had sexual intercourse with her about two or three weeks before March 8. This contention is contrary to the doctrine in the case of *U. S. vs. Casten* (34 Phil., 808) which is set forth as follows:

"2. ID.; VIRGINITY.—The contention of the defendant that the offended girl was not a virgin because sometime prior to the abduction he succeeded in having carnal intercourse with her is not well founded because the interruption of continuity between this act and that of the abduction was not sufficient to negative the object and purpose of the crime, and because, furthermore, the virginity to which article 446 of the Penal Code refers is not to be understood in so material a sense as to exclude the idea of the abduction of a virtuous woman of good reputation."

The appellant also contends that there was no character of permanency in the withdrawal of Olimpia from her father's house as she returned the next day. The disappearance of Olimpia from her parent's house for one night was sufficient to produce great alarm to her father, who made frantic efforts to search for her. This case is, therefore, different from that of *People vs. De la Cruz* (48 Phil., 533) where the accused took the girl for a ride and brought her back to her house after a couple of hours, her absence not having produced any alarm in her housemates. (*People vs. Cabrera*, CA-G. R. No. 228, promulgated May 19, 1947, and *Viada*, 5, p. 278, 5th Edition.)

The trial court did not impose upon the accused the obligation to support any possible offspring in view of the testimony of Victorino that Olimpia did not conceive after cohabiting with the appellant. The trial court correctly considered the aggravating circumstance of nocturnity, which attended the commission of the crime.

In view of the foregoing, the judgment appealed from is affirmed to all its parts, with costs against the appellant. It is ordered.

De la Rosa and Rodas JJ., concur.

Judgment affirmed.

[No. 2257-R. October 27, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
CHUA CHIO GIOK, defendant and appellant

1. CRIMINAL LAW; ROBBERY; EVIDENCE; FLIGHT AS EVIDENCE OF GUILT.—Flight is evidence of guilt and of a guilty conscience. "The wicked fleeth, even when no man pursueth, whereas the righteous are as brave as the lion." (*People vs. Tan Choco*, 42 Off. Gaz., p. 3187). If accused and his companions did not have guilty conscience, there was no reason why they did not order the driver to stop when the police officers signalled them to do so, and again there was no reason why accused had to threaten the taxi driver with his pistol, ordering the latter to proceed and move faster.
2. ID.; ID.; ID.; CREDIBILITY OF WITNESSES; SETTLED RULE.—It is too well-settled that where there is a conflict in the testimony of

witnesses in a criminal action, those of the defense giving evidence directly contradictory to those given by the prosecution, the appellate court will not interfere with the conclusions of the trial court concerning the credibility of such witnesses, in view of the fact that the trial court saw them in the act of testifying and observed their manner and demeanor as witnesses, unless it is satisfactorily shown that the trial court overlooked, misunderstood or misapplied some fact or circumstances of weight and influence sufficient to induce the belief that, if the error had not been committed, the decision on the question would probably have been different.

APPEAL from a judgment of the Court of First Instance of Rizal. Castelo, J.

The facts are stated in the opinion of the court.

P. A. Revilla for appellant.

Assistant Solicitor-General Torres and *Solicitor Vivo* for appellee.

DE LEON, J.:

Chua Chio Giok, Chin Yang Hong and Go Yak were charged with the crime of robbery. After due trial in the Court of First Instance of Rizal, Go Yak was acquitted while Chua Chio Giok and Chin Yang Hong were each convicted and sentenced to a penalty of from one (1) year, seven (7) months and seventeen (17) days of *prisión correccional* to six (6) years, one (1) month and eleven (11) days of *prisión mayor*, to indemnify Tan Tok in the sum of ₱1,000 and to pay the costs. Only the accused Chua Chio Giok has appealed against the said decision.

It appears in evidence that at about ten o'clock in the night of April 20, 1947, appellant Chua Chio Giok and Chin Yang Hong went up the house of Tan Tok at Grace Park, Caloocan, Rizal. Appellant who was then armed with a revolver pointed his gun at the right side of Tan Tok demanding money, and at the same time opened a drawer of Tan Tok's desk and got therefrom the sum of ₱1,000 which represented the latter's collection from some Chinese residents for the support of the Chinese Intermediate School of which he was the president. Immediately, thereafter, appellant and his said companion left Tan Tok's place and rode in a Malate taxicab No. 556 which had been waiting for them near the house. No sooner had they left, Tan Tok called for help and his neighbors flocked to his premises. Policemen of Caloocan then on jeep patrol at Avenida Rizal Extension, upon seeing the crowd in front of Tan Tok's house stopped to investigate what was going on in said place. Tan Tok reported to the police officers that he had been robbed of ₱1,000 and that the perpetrators of the robbery had just escaped in a Malate taxicab bearing plate No. 556. Just at that precise moment, the very taxi mentioned by Tan Tok was seen coming from the direction of the Bonifacio monument

towards Manila. Policeman Manansala sounded his whistle to stop the taxi, which, however, instead of stopping put on more speed and proceeded towards Manila. The police officers then boarded their weapons carrier to chase the fleeing taxi. They lost sight of the car. After some hours of search, or in the early morning of the next day, they found the same taxi parked in front of a restaurant on Rizal Avenue near Tayabas Street. The taxi driver, Bonifacio Ibañes, upon being asked why he did not stop his car, answered that he could not do so, because appellant Chua Chio pointed a gun on his side and ordered him to go ahead. When asked where his passengers were, Ibañes pointed to the three accused who were then taking some refreshments, in a restaurant nearby. The Police officers searched the taxi and found therein a pistol, caliber 45, licensed in the name of appellant and identified by the taxi driver as the very gun with which he was threatened by appellant, when the policemen were trying to stop them as they were passing Tan Tok's place. The three Chinese passengers pointed by the driver were then arrested, brought first to the house of Tan Tok who immediately identified appellant and Chin Yang Hong as the very persons who robbed him that night and later to the municipal building of Caloocan for further investigation.

Appellant Chua Chio Giok admits that in the night in question, he, together with Chin Yang Hong went up the house of Tan Tok, leaving in the taxi, their companion the accused Go Yak, who was acquitted. He, however denies having committed the robbery under prosecution. He claims that he and his said companion went up to Tan Tok's house that night in order to have good time with some prostitutes and he became enraged when Tan Tok failed to satisfy their desire; that, because he was drunk then and because he was insisting in Tan Tok's giving them some women, he and the latter nearly came to fistic blows—which occurrence must have prompted Tan Tok in concocting this robbery charge.

Counsel for appellant admits, and we commend him for his frankness, that "the decision of the trial court faithfully records the facts of the case as submitted by the prosecution and the defense," and points out that the whole question boils down to one of credibility.

Upon a review of the evidence of record, we find that the learned trial court has correctly upheld the theory of the prosecution and completely rejected that of the defense. In reaching his conclusion, the trial judge states:

"Si los acusados no han cometido el robo alegado por Tan Tok, ¿por qué no se detuvieron cuando los policías paraban el coche en que iban? Las pruebas son bien claras: Chua Chio Giok y su co-acusado con violencia e intimidación en la casa de Tan Tok en la noche del 20 de abril de 1947. De otro suerte, no hubieran tenido

reparo alguno en parar el coche cuando los policias les hicieron alto al pasar frente a la casa de Tan Tok aquella noche. El Juzgado no encuentra razón alguna para dudar del testimonio de Tan Tok, puesto que los mismos acusados Chua Chio Giok y Chin Yang Hong admiten que Tan Tok es un antiguo conocido de ellos." (Page 4 of appealed decisión.)

We are fully in accord with the above finding. It has been said that flight is evidence of guilt and of a guilty conscience. "The wicked fleeth, even when no man pursueth, whereas the righteous are as brave as the lion." (People *vs.* Tan Choco, 42 Off. Gaz., p. 3187.) If appellant and his companions did not have guilty conscience, there was no reason why they did not order the driver to stop when the police officers signalled them to do so, and again there was no reason why appellant had to threaten the taxi driver with his pistol, ordering the latter to proceed and move faster. Furthermore, there is nothing in the record which shows or tends to show any motive on the part of Tan Tok to falsely charge appellant and his co-accused with the crime of robbery. If all that had happened, as the defense wants the court to believe, was a little quarrel arising from appellant's alleged insistence in getting some women that night, it is inconceivable that their countryman Tan Tok who was their acquaintance, would readily frame up such a serious charge of robbery and to report the matter to the Caloocan police immediately after the accused had escaped. Again, the record shows that appellant's testimony was full of contradictions and improbabilities. What is more, he even flatly denied that he was the defendant in criminal case No. 513 of the very same court where he was then being tried, when in truth and in fact, he was so indicted. Such disrespect for truth coupled with his admission that he had led a frivolous life and indulged in illegal transactions would certainly render him unworthy of credence. Last, but not the least, the fact that his co-accused, Chin Yang Hong, did not interpose an appeal fortifies our conviction that the decision appealed from is free from any prejudicial error.

It is too well-settled to need a citation that where there is a conflict in the testimony of witnesses in a criminal action, those of the defense giving evidence directly contradictory to those given by the prosecution, the appellate court will not interfere with the conclusions of the trial court concerning the credibility of such witnesses, in view of the fact that the trial court saw them in the act of testifying and observed their manner and demeanor as witnesses, unless it is satisfactorily shown that the trial court overlooked, misunderstood for misapplied some fact or circumstances of weight and influence sufficient to induce the belief that, if the error had not been committed, the decision on the question would probably have been different. We have examined the record carefully and have

found no justification whatsoever in disturbing the findings of the lower court. In our opinion, the guilt of the appellant has been established beyond reasonable doubt.

The crime committed is robbery as defined and penalized under article 294, paragraph 5 of the Revised Penal Code as amended by Republic Act No. 18, with *prisión correccional* in its maximum period to *prisión mayor* in its medium period or from 4 years, 2 months and 1 day to 10 years. We find in this commission of the offense, the aggravating circumstances of dwelling and night time and without the attendance of any mitigating circumstance. For this reason, the penalty that should be imposed upon the appellant should be 2 years, 4 months and 1 day of *prisión correccional* as minimum to 8 years and 1 day of *prisión mayor* as maximum, to indemnify Tan Tok, jointly and severally with Chin Yang Hong, the sum of ₱1,000, and to pay one-third of the costs.

Wherefore, and with the modification of the penalty as above indicated, we hereby affirm the judgment appealed from in all other respects, with costs against the appellant.

Concepcion and Dizon, JJ., concur.

Judgment modified.

[No. 2199-R. October 28, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. WILLIAM KELLER, defendant and appellant

1. CRIMINAL LAW; EVIDENCE; "CONFESSION" AND "ADMISSION" DISTINGUISHED.—A *confession* is a declaration of an accused that he had committed or participated in the commission of a crime. The term *admission*, on the other hand, is usually applied in criminal cases to statements of fact which do not directly involve an acknowledgment of guilt or of criminal intent. (U.S. *vs.* Corrales, 28 Phil., 362; U.S. *vs.* Razon, 37 Phil., 856.) In the present cause, defendant's statement in Exhibit I is not a direct and positive acknowledgment of his guilt. Hence, it is not an extra-judicial confession, but an admission.
2. ID.; ID.; EFFECT OF FAILURE TO OBJECT TO ADMISSION OF POLICE STATEMENT BEFORE PRESENTATION OF EVIDENCE FOR THE DEFENSE.—In the case at bar, Exhibit I, the defendant's police statement, was presented and admitted before the period of presentation of the evidence for the defense. The failure of the defense to object to the admissibility of the statement (Exhibit I), as direct proof of the existence of the facts stated therein, and not as a rebuttal evidence, makes untenable the contention that said police statement has no other probative value than to impeach the credibility of the accused's testimony on the witness stand.
3. ID.; ID.; CONFESSION AND ADMISSION; ADMISSIBILITY.—Not only is a confession expressing acknowledgment by the accused in a criminal case of the truth of his guilt as to the crime charged admissible in evidence, but also an admission of the facts of material matter, even though it is not a direct acknowledgment of his guilt, is receivable as evidence against the accused. The law is clear. The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. (Sec-

tion 7, Rule 123, Rules of Court.) And this rule is applicable to all trials and hearings whether civil or criminal. (Section 2, same rule.) (Stephen, Digest Evidence, Art. 15; 2 Chamberlayne, Modern Law on Evidence, p. 1565; Ogden *vs.* Sovereign Camp. W. W., 78 Nebr., 806, 809, 113 N.W. 524; SEC. 298, subsection 2, Act 190; U.S. *vs.* Ching Po, 23 Phil., 578, 583; Pollack *vs.* State, 253 N.W. 560, 215 Wis. 200 Affirmed 254 N. S., 471, 215 Wis. 200; 22 C. J. S., 1423; State *vs.* Porter, 32 Or. 125, 49 Pac. 964; 16 C. J. 626-627; II Wharton's Criminal Evidence, 11th Ed., 1081-1082; U.S. *vs.* Corrales, 28 Phil., 362; U.S. *vs.* Razon, 37 Phil., 856; People *vs.* Bantangan, 54 Phil., 834.)

4. *Id.*; HOMICIDE; SELF-DEFENSE; AGGRESSION IN RESPONSE TO AN INSULT, ITS EFFECT ON SELF-DEFENSE.—When an act of aggression is in response to an insult, affront, or threat, it cannot be considered as a defense but as the punishment which the injured party inflicts on the author of the provocation, and in such case the courts can at most consider it as a mitigating circumstance, but never as a reason for exemption, except in violation of the provisions of the Penal Code. (U.S. *vs.* Carrero, 9 Phil., 544, 546.)

APPEAL from a judgment of the Court of First Instance of Manila. Sanchez, J.

The facts are stated in the opinion of the court.

Carlos M. Sison for appellant.

Assistant Solicitor-General Rosal and *Solicitor Carreon* for appellee.

BORRAMEO, J.:

Plaza Goiti, one of the main squares in the busiest business section of the chief city of the Philippines, was the scene of an unhappy incident which culminated in the death of Jaime Logronio on the night of June 25, 1947, as a result of a fist blow administered by a young soldier of the U. S. Army, William Keller, who was then accompanied by his two comrades, Richard Risley and Joe Miller, and their respective girl-friends. Cause of the death: Shock and intracranial hemorrhage due to traumatic fractures of the skull and maceration of the brain.

Subsequently, the three soldiers faced charges for homicide before the Honorable Judge Conrado Sanchez of the Manila Court of First Instance, whose decision, adverse to defendant William Keller, is sought for reversal in this appeal. The other two defendants were acquitted on the ground that, in the expression of the trial judge, a review of the facts shows that neither defendant Joe A. Miller nor defendant Richard Risley participated directly in the commission of the offense.

The judgment of conviction, nevertheless, is not based on the testimony of any of the eye witnesses for the prosecution, but on the strength of the facts disclosed by a statement of the convicted defendant made at the Detective Bureau of the Manila Police Department early in the morn-

ing of June 26, 1947. This statement, Exhibit I, handwritten by Keller himself, reads as follows:

"Left Parañaque Regt. & Disp. Center approximately at 3:00 p. m. with a friend by the name of Henry Allen on my way to the girl-friend's house. Allen was enroute to his old outfit 10th Gen. Hosp. A. P. O. 1105.

"I arrived at the girl-friend's and prospective wife's house app. 4:00 p. m. Her (Nina Fox) and I sat and talked to Carole Risley and Joe Miller. After having appeared we decided to go to a movie.

"So on our way downtown we, that is Joe Miller, Carole, Nina and Risley, stopped to pick up Joe's girl friend, and then we were on our way to the movie. We got to the State Theatre in time for the last movie. After the movie we came out of the theatre and was on our way to the Santa Cruz parking lot.

"About $\frac{3}{4}$ around the Plaza Goiti in front of the Consolidated Bldg. is where the incident which Nina was insulted.

"The traffic was heavy. Joe Miller and his girl friend (Maddie) went or started across the street first then Risley and Carole, and then Nina and I. After starting Nina and I could not make it across on account of an oncoming jeep. So we stepped back to let the jeep pass. I looked first to left and then to the right in which the jeep came in the first place. Then a Filipino came from somewhere and came on her right side. I was on her left. And he attacked her with his left hand. Nina then slapped him, I then went to him and grabbed him then called to Joe and Risley. Risley escorted Maddie and Carole to the other side of the street in front of the Consolidated Bldg. Joe came back. Then Risley came and by the time he (Risley) got there he pulled the gun. He also loaded the gun. Risley and Joe grabbed the gun and I hit him. When I hit him he fell back against the sawali fence and to the ground.

"I hailed at Lt. Col. Lolli. And he asked me what happened and I told him. He said let's get him to the hospital. And the Lt. Col. took him, and then C. I. D. agent took the gun and we were on our way to the Police Station at Meisic and from there to the Crimes Against Person and Arson Division, Detective Bureau."

"A statement such as that made by the accused William Keller," declared the trial court, "is a sufficient ground for conviction provided it is corroborated by evidence of *corpus delicti*," thus invoking section 96, Rule 123 of the Rules of Court, which provides that "an extra-judicial confession made by an accused, shall not be a sufficient ground for conviction, unless corroborated by evidence of *corpus delicti*. And "*corpus delicti* means that a specific crime has actually been committed by someone and is made up of two elements, first, that a certain result has been produced and, second, that someone is criminally responsible therefor," Citations follow: Sec. 16, C. J., 771; People *vs.* Bantayan, 54 Phil., 834, 840-841; People *vs.* Marquez, 43 Order General No. 5, pp. 1653, 1655-1656; People *vs.* Bernadez, et. al.; 43 Order General No. 6, pp. 2260, 2264-2265.

"No amount of ponderous ratiocination," continued the court, "is necessary to show that according to the statement Exhibit I, corroborated by the other statement Exhibit J, the fist blow was given by Keller at a time when

the gun of Logronio was already wrested from him. There is not a scintilla of evidence in the record which would show that Keller gave the blow in retaliation for a fist blow let loose by the deceased. That the fist blow was given and that it was Keller who gave it is a fact in which both oral and documentary evidence are unanimous. It, therefore, results that the extra-judicial statement or confession Exhibit I is corroborated by evidence of *corpus delicti* and is admissible in evidence, if only as against the maker thereof, the accused William Keller. On the basis of such evidence a case for the people is established against Keller."

In the opinion of the trial judge, therefore, the extra-judicial confession Exhibit I contains facts which prove beyond reasonable doubt the commission of the crime of homicide by defendant William Keller.

His Honor, viewing the case from a different angle, further said: "Keller, in his extra-judicial confession Exhibit I and in his testimony in court, admitted that he was the author of the blow which produced the injuries resulting in the death of Logronio. But in exculpation he did set up self-defense. It is a rule well-buttressed upon authority that one who admits the infliction of the injury which causes death has the burden of proving self-defense, an affirmative allegation. While there is a light variation in the language used by our Supreme Court in reference to the *quantum* of proof necessary to established self-defense, the meaning of the decisions is distilled into that phrase, 'clear and convincing.' An accused claiming self-defense must plant his case, on the strength of his own evidence and not on the weakness of that of the prosecution." (Citing *People vs. Silang Cruz*, 53 Phil., 635, 637, 638; *People vs. Gutierrez*, 53 Phil., 609, 610-611; *People vs. Alviar*, 56 Phil., 98, 100-101; *People vs. Apolinario et al.*, 58 Phil., 586, 588; *People vs. Gimena*, 59 Phil., 509 513-514; *People vs. Berio*, 59 Phil., 533, 536-537; *People vs. Espenilla*, 62 Phil., 265, 270; *People vs. Ansoyon*, 42 Order General No. 6, pp. 1238, 1242; *People vs. Borbano*, 43 Order General No. 2, pp. 478, 483; *People vs. Ramos*, 43 Order General No. 4, pp. 1203; 1205; *People vs. Bauden*, 43 Order General No. 6, pp. 2020, 2022.) "Self-defense," concluded the distinguished judge, "accordingly fails, and accused William Keller is liable."

Wherefore, finding defendant William Keller guilty beyond reasonable doubt of the crime of homicide with three mitigating circumstances, to wit: lack of intention to commit so grave a wrong, passion or obfuscation, and voluntary surrender, the Court *a quo* sentenced him to imprisonment for an indeterminate period ranging from six (6) months and one (1) day of *prisión correccional* to six (6) years and one (1) day of *prisión mayor*, to indemnify the

heirs of the deceased Jaime Logronio in the sum of (P2,000) and to pay one-third of the costs.

THE ASSIGNMENT OF ERRORS

The appellant assails the judgment of conviction by pointing out three errors committed by the Court *a quo*: (1) In considering the written statement of William Keller, Exhibit I, as an extra-judicial confession instead of a mere relation of facts to the police; (2) In finding the evidence for the defense not clear and convincing; and (3) In finding the defendant and appellant guilty of the crime of homicide instead of completely exempting him from any criminal liability on the ground of self-defense.

Then the counsel for the appellant, in a well prepared brief, discusses at length the merits of Keller's police statement Exhibit I in order to conclude that, as it is, it is not an extra-judicial confession of his guilt. To the appellant, the nature of such a statement is of utmost importance in the determination of his guilt or of his innocence. So, he contends that whatever interpretation may be given to Exhibit I, in no way does it imply admission of guilt. Therefore, it cannot be intepreted as an extra-judicial confession. "We have read the statement over and over again," claims the counsel, "in an effort to find a single phrase or word admitting his guilt of the crime of homicide. We have searched in vain."

Emphasis is given in the brief on the juridical distinction between *confession* and *admission*, taking into account the far reaching significance of the term *confession* which, according to Mr. Chief Justice Moran, is an admissible evidence of a high order. A confession is a declaration of an accused that he had committed or participated in the commission of a crime. The term admission, on the other hand, is usually applied in criminal cases to statements of fact which do not directly involve an acknowledgment of guilt or of criminal intent. (U. S. *vs.* Corrales 28 Phil., 362; U. S. *vs.* Razon, 37 Phil., 856.)

In the present cause, defendant Keller's statement in Exhibit I is not, in our opinion, a direct and positive acknowledgment of his guilt. Hence, it is not an extra-judicial confession, but an admission. "When the defendant at the preliminary investigation made the statement that he had inflicted upon the deceased the wounds in question, said statement is not a confession of guilt, in the legal sense of the word, but only an admission, as the defendant might have inflicted the wounds in self-defense, in which case he would not be guilty." (U. S. *vs.* Tolota, 5 Phil., 616.)

"A police statement such as Exhibit I is never admissible in evidence as proof of the facts stated therein but only serves the puporse of impeaching the veracity of the de-

fendant's declarations on the witness stand." So argues the appellant, and to support his contention, the following are his references:

"It is universally maintained by the Courts that prior self-contradiction are not to be treated as having any substantive or independent testimonial value." (Wigmore, on Evidence, Vol. III, sec. 1018.)

"When a witness is impeached by proof of prior inconsistent statements, effect is merely to discredit him as witness; former statements are incompetent for any other purpose, and do not constitute evidence of truth of facts stated." (*Albert vs. McKay & Co.* 174 Cal. 451, 163 Pac. 666, italics ours.)

"Contradictory statements are admissible solely to impeach the witness, and for no other purpose. They are ineffective as direct and affirmative proof of the facts of which they relate." (*Fires vs. Brugler*, 12 N. J. L., 79, 21 Am. Dec., 52, *Lydstan vs. Rockingham County Light, etc.*, Col. 75 N. H., 23, 70 Atl. 385 Ann. Cas. 1236, *Hagrard vs. Consolidated Traction* Col. 64 N. J. L., 316, 45 Atl. 620, 81 A. S. R., 498, 49 L. R. A., 424; *Medlin vs. County Board of Education* 167 N. C., 239; 83 S. E. 483 Ann. Cas. 1916 E. 300; *Culpepper vs. State*, 4 Okla. Crim. 103, 111 Pac. 678, 140 A. S. R., 668, 31 L. R. A., (N.S.) 1166; *Geors vs. State*, 61 Tep. Crim. 176, 135 C. W. 373, 33 L. R. A. (N.S.) 477, italics ours.)

Counsel for the appellant concludes his argument with these words: Exhibit I, not being extra-judicial confession as shown above, the whole basis of the decision is swept away, leaving the said decision indefensible and legally wrong. For a careful reading of the said decision impresses one that were it not for the fact that Judge Sanchez considered Exhibit I as an extra-judicial confession, conviction of Keller is impossible."

THE ADMISSIBILITY OF KELLER'S STATEMENT

Looking into the record of this case, we find on page 198 of the stenographic notes' transcript, the following ruling:

"COURT:

Exhibits G, H and I are admitted without objection of the defense as evidence by themselves *per se*, and as a part of the testimony of the witness Alday."

We find, further that these Exhibits were presented and admitted before the period of presentation of the evidence for the defense.

If the defense, at the trial of this case, offered no objection to the admissibility of Keller's police statement as direct proof of the existence of the facts stated therein, and not as a rebuttal evidence, there can be no room to entertain now the contention that Exhibit I has no other probative value than to impeach the credibility of Keller's testimony on the witness stand.

This being the case, the question as to whether the statement Exhibit I is an extra-judicial confession or an admission, is purely academical, since it is an undisputed fact, proven and admitted by the defendant himself, that he was the author of Logronio's death. If he claims that he

acted in self-defense in killing Logronio, the burden, according to a well-settled rule, lies on the accused to make out this affirmative allegation with clear and convincing evidence.

Not only is a confession expressing acknowledgment by the accused in a criminal case of the truth of his guilt as to the crime charged admissible in evidence, but also an admission of facts of material matter, even though it is not a direct acknowledgment of his guilt, is receivable as evidence against the accused. The law is clear. The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. (Section 7, Rule 123, Rules of Court.) And this rule is applicable to all trials and hearings, whether civil or criminal. (Section 2, same rule.)

A statement, oral or written, made by a party, or by someone for whom he is responsible, as to the existence of a relevant fact, constitutes an admission receivable in evidence against him. (Stephen, Digest Evidence, Article 15; 2 Chamberlayne, Modern Law on Evidence, p. 1565; *Ogden vs. Sovereign Camp W.W.*, 78 Nebr., 806, 809, 113 N. W. 524)

In the language of the law, the act, declaration, or omission of a party may be given as evidence against him. (Sec. 298, subsec. 2, Act. No. 190.) A man's act, conduct, and declaration, wherever made, if voluntary, are admissible against him, for the reason that it is fair to presume that they correspond with the truth, and it is his fault if they do not. (*U. S. vs. Ching Po*, 23 Phil., 578, 583.)

In its broad sense, the term "admission" includes as one of its species, "confessions." (*Pollack vs. State*, 253 N. W. 560, 215 Wis. 200 Affirmed 254 N. S. 471, 215 Wis. 200. 22 C. J. S., 1423 (f.n.)

"We take it that the admission of fact, or of a bundle of facts, from which guilt is directly deducible, or which with-in and of themselves impart guilt, may be denominated a confession." (*State vs. Porter*, 32 Or. 125 49 Pac. 964.)

Authorities cited in the brief for the appellee: 16 C. J., 626-627; II Wharton's Criminal Evidence, 11th Ed., 1081-1082; *U. S. vs. Corrales*, 28 Phil., 362 also cited in appellant's brief; *U. S. vs. Razon*, 37 Phil., 856; *People vs. Bantangan*, 5A Phil., 834.

THE ISSUE OF SELF DEFENSE

It is an undisputed fact, established by the evidence both for the prosecution and the defense, that Jaime Logronio died as a consequence of the fist blow on the jaw administered by William Keller, who at a single punch threw him down a brick pavement, thus causing the deceased traumatic fractures of the skull and maceration of the brain.

The defendant on the trial pleaded not guilty, but admitted the killing in defense of himself. This is, indeed, the pivotal issue to be determined.

The trial court disbelieved the evidence for the defense and at the same time wholly disregarded the evidence for the people. The judgment of conviction was primarily based on the police statement of the defendant Exhibit I from which a conclusion was drawn to the effect that Keller failed to make out his claim of self-defense by clear and convincing evidence. In other words, the court *a quo* overruled the self-defense because of its finding from the extrajudicial admission Exhibit I, that Keller inflicted the death-dealing fistic blow when Logronio's gun was already taken off his hands, hence, the absence of the first prerequisite for an act of self-defense.

With reference to the two star witnesses for the prosecution, Juan Cervales and Venancio Madraso, who claimed to have seen the incident, the trial court flatly discarded their testimony on the ground that they contradicted each other, Cervales made inconsistent statements to the police, and Madraso exaggerated his version of the incident.

Although the record shows some contradictions, inconsistencies, and even exaggerations in the testimonies of both witnesses, it does not make them, however, irreconcilable or impossible to render a finding of the actual facts, because they agree on essential facts. For instance, both witnesses testified that Keller went after Logronio and dragged him back to the Republic arch; that one of Keller's GI companions took the gun of Logronio from his pocket; that the defendant thereupon gave a fist blow to Logronio; and that he fell flat on the ground. These assertions are substantially in accord with Keller's police statement Exhibit I and Nina's statement Exhibit J, the latter having been introduced into the record to impeach Nina's testimony.

"Immaterial discrepancies or differences in the statements of witnesses do not affect their credibility, unless there is something to show that they originate in wilful falsehood. If there are conflicts in the statements of different witnesses, it is the duty of the court to reconcile them if it can be done, for the law presumes that every witness has sworn the truth." (U. S. *vs.* Lasada, 18 Phil., 90, 97.)

"Triers of facts are not bound to believe all that the witness has said; they may accept some portions of his testimony and reject other portions, according to what seems to them, upon other facts and circumstances, to be the truth. Counsel may properly argue that the jury should find in accordance with part of his client's testimony, and in other particulars should reject it and find in accordance with the testimony of other witnesses, on whatever side

called. In other words, the law recognizes the fact that parties, as well as other witnesses, may honestly mistake the truth, and require juries to find the facts by weighing all the testimony, whatever may be its sources * * * Even when witnesses are found to have deliberately falsified in some material particulars, the jury are not required to the whole of their uncorroborated testimony, but may credit such portions as they deem worthy of belief. * * * They are to weigh all the evidence, and while they may not pervert or distort it by rejecting integral parts of a statement, they may accept or reject each distinct statement. They may thus find proved a state of facts to which as a whole no single witness has testified, and which in some particular is contrary to the account given by every individual witness." (I Moore on Facts, p. 23.)

It seems that the issue of self-defense in the court *a quo* turned chiefly on the question whether the defendant struck the deceased before or after the gun of the latter was grabbed by Miller. In this respect, the counsels for the people, Assistant Solicitor-General Inocencio Rosal and Solicitor Francisco Carreon, in their brief, made this remark: "The trial court, by basing its judgment of conviction on the finding that appellant hit Logronio only after Miller has successfully wrested the gun, quite possibly misled the appellant here to focus on this point as if it were the only crucial one in the determination of his guilt or innocence. The appellant and the court *a quo* have divided the entire action into several parts like panels in a cartoon strip and have examined only that panel relating to the moment of actual attack. We think that the events of this case cannot be so divided for they followed each other swiftly and continuously without appreciable break or interval from the time that Logronio touched the private parts of Nina Fox to the time when he was hit on the jaw by Keller."

From the viewpoint of the defense, the unlawful aggression began when Logronio drew his gun and pointed it at Keller. This should not be the case. All the events of the happening should be considered in their entirety in order to determine who the aggressor was.

Now, for a better comprehension of the merits of the case, let us divide the incident into two parts, the second to begin when Keller, upon hearing Nina Fox's complaint that she was the object of an indecent act, shouted to his comrades to wait, walk towards Logronio who was proceeding on his way to the rear of the Santa Cruz church, and so forth.

It was around 10:30 o'clock in the night of June 25, 1947—the proofs disclosed—when William Keller with his girl-friend Nina Fox, and Richard Risley and Joe Miller

both accompanied, too, by their respective girl-friends Carole Pereyra and Matilde del Rosario, left the State Theatre and started to walk towards the Army parking lot located on the right side of the Consolidated Investments building in Plaza Goiti, City of Manila. The three young Americans were soldiers of the U. S. Army. They were walking by pairs, Keller and Nina Fox following the two. At that time there was an arch constructed *ad hoc* in the center of the plaza in connection with the coming anniversary celebration of the Philippine Republic. While crossing Plaza Goiti from The Republic Arch to the curb of the Consolidated Investments building, a jeep passed from Santa Cruz bridge on its way to Rizal Avenue, and Keller and Nina had to stay behind to let the jeep go through. When the pair was crossing the street towards the curb of the Consolidated Investments building, a man coming from the opposite direction on his way to the curb at the back of Santa Cruz church bumped into the right shoulder of Nina Fox and touched her private parts. It was Jaime Logronio. Nina at once wheeled about, got hold of the right arm of the man turning it clockwise then slapped him. Keller asked her what happened, and she related what the man did to her. Then Keller shouted to his comrades to wait, and walked towards Logronio who was proceeding to the rear of the Santa Cruz church. Keller was able to overtake Logronio and grabbed him by the arm, and pulled him back to the arch.

The foregoing are facts established in the record, undisputed. The second part of the tragedy referring to the actual attack is accounted for in the record in different ways. The version of the defense is different from that of the prosecution, for, while according to Keller and his witnesses, the deceased drew his gun and aimed it at him, prosecution witnesses Juan Cervales and Venancio Madraso corroborated in substance by the defendant himself in his extra-judicial admission Exhibit I, pointed to the fact that Logronio never drew his gun, and this arm was already grabbed by one of Keller's GI companions when the latter socked him, which is precisely the finding of the court *a quo*.

Both parties, however, agreed in substance in the narrative on the fatal conclusion of the tragedy, to wit: That the single blow inflicted by Keller on Logronio's jaw threw him flat on the ground; that upon falling on the brick pavement, he broke his skull by the impact and after the lapse of a few minutes Logronio was taken to the Philippine General Hospital; that on the way the wounded man died within ten minutes of the time when he received the fist blow; and that according to the medical examiner of the Manila Police Department Dr. Abelardo V. Lucero, following an autopsy of the cadaver, the cause of the death was

a shock and an intra-cranial hemorrhage due to traumatic fractures of the skull and maceration of the brain.

But counsel for appellant, taking the case from the viewpoint of the defense, insists that Keller should be acquitted on the ground that the homicide of Logronio was justified by the presence of the three elements of self-defense, that is, that there was unlawful aggression on the part of the deceased, that there was a reasonable necessity of the means employed to prevent or repel it, and that there was no provocation on the part of Keller defending himself.

As to the first part of the incident, it is obvious that the provocation originated from the deceased by his indecent behaviour was a serious provocation. Keller, presumably, in his manly pride as the escort of the offended girl, must have felt deeply insulted with such an odious act.

Now comes the second part. It is an undisputed fact that Keller, upon hearing Nina's information that the man who bumped her on the shoulder touched her private parts, shouted to his comrades to wait, walked towards Logronio who was already proceeding his way towards the sidewalk behind the Santa Cruz church, and in overtaking him Keller grabbed him by the arm and pulled him back to the arch. Nina Fox testified that to satisfy her anger, she insulted the man in Tagalog and slapped him for the second time. Miller and Risley heard Keller's call and Risley, upon the suggestion of Miller, took Matilde and Carol across the street, while Miller himself went to Keller's aid. After Risley had taken the two girls to the other side of the street in front of the Consolidated Investment building, he also went back to the arch where Keller and Logronio were.

There is nothing on the record that Logronio showed any sign of revenge after he was slapped for the first time; on the contrary, the evidence is clear that immediately upon receiving the chastisement from the girl whom he offended, he went on his way towards the sidewalk behind the Santa Cruz church, so the incident could have ended peacefully. The herein appellant, however, went after Logronio and pulled or, in the expression of the counsel for the defense, "dragged" him back to the arch, and right there and then Nina insulted him and slapped him for the second time. Both were, therefore, responsible for an act of retaliation which by no means was justifiable. In other words, the aggression came from Keller himself, and not from the deceased. When an act of aggression is in response to an insult, affront, or threat, it cannot be considered as a defense but as the punishment which the injured party inflicts on the author of the provocation, and in such case the courts can at most consider it as a mitigating circumstance, but never as a reason for exemption, except

in violation of the provisions of the Penal Code. (U. S. *vs. Carrero*, 9 Phil., 544, 546.)

Counsel for the appellant frankly admitted, in his oral argument, that "there was a sort of aggression on the part of Keller, but not to the extent of qualifying it as an unlawful aggression."

Describing the incident, Miller testified that after Nina slapped Logronio (for the second time), Keller stepped closer to Logronio. The latter stepped back two steps and drew his pistol from his right pocket. Explaining further, he said that when Nina slapped the man, he stepped back and pulled his gun, at the same time Keller stepped to the left and closer to the man and around the man.

Keller, as described in the record, was a tall man, 19 years old, taller than his two GI companions, and according to his own declaration, he is taller than Logronio, who is only 5 feet 8½ inches in height.

In appellant's brief the encounter is portrayed in this guise: "Miller and Risley meanwhile were on their way to where Keller and the deceased were in response to the call of Keller to wait. When the accused Miller and Risley were walking towards Keller and the deceased, which was immediately after he was slapped by Nina Fox for the second time, the deceased Logronio, *apparently frightened* by the impending arrival of Miller and Risley, took two or three steps backwards and drew his gun again from his right pocket." It is said "again" in this brief to correlate with the previous event described therein as follows: "Keller, upon hearing of this act perpetrated on his partner, shouted to his co-accused to wait and walked towards the deceased who was proceeding on his way to the rear of the Sta. Cruz church. Keller, upon catching up with the deceased around six or seven steps from where he was, got hold of the left arm of the deceased, dragged him near the arch, and asked him what was the big idea. The deceased Logronio then drew his gun and upon being told by Keller to put it away, he did."

Concluding the story, appellant's brief says: "Upon drawing the gun for the second time, Logronio put a shell in the magazine and pointed the gun to Keller. When Miller and Risley arrived, with Miller standing on the left side of the deceased at a distance of around five feet, and Risley further back at the left side of Miller, Keller told Risley and Miller to grab the deceased's gun, put aside with his left hand the right arm of the deceased which was holding the gun pointed at him, and, in a split second socked him. When the deceased was on the act of falling, Miller rushed in between Keller and the deceased, got hold of the barrel of the gun which was still in the right hand of the deceased but was already up in the air because the deceased was then falling, twisted the barrel clockwise and, before

the deceased actually hit the ground, Miller had the gun in his possession. * * *."

Granting arguendo the ascertainment of the defense witnesses that Logronio drew two times his pistol to the extent of throwing one bullet into its chamber, which is contrary to the evidence of the prosecution in that the deceased never drew his gun, yet, considering the surrounding circumstances, it cannot be concluded that Logronio's imputed act was an unlawful aggression. His attitude was purely defensive.

In short, taking together all the events and circumstances of the incident, we are bound to conclude that the unlawful aggression from the deceased claimed by the appellant, was not present in his case. There can be no room, therefore, to entertain any consideration on the second prerequisite of self-defense claimed by appellant. The most he could get is the extenuating circumstance of provocation on the part of the deceased. (U. S. *vs.* Carrero, *supra.*)

At any rate, the version of the defense, flimsy as it is in itself, merited no consideration at all from the trial court. The reenactment of the scene by one of its witnesses, Miller, who made a graphic description of the relative positions of the persons involved and the distances between them, left the judge cold and unconvinced. His Honor who tried the case, was, indeed, in the best position to know what kind of witness Miller was.

In conclusion, the self-defense claimed by the appellant to have been established in his case, is untenable, and the assertion of the two eyewitnesses for the prosecution, supported by the defendant himself in his extra-judicial admission Exhibit I, to the effect that Keller went after Logronio who was already on his way towards the sidewalk behind the Santa Cruz church, and pulled him back, held his arm, then one of Keller's GI companions took the gun from Logronio's pocket, and the defendant gave him a fistic blow and as a result he died almost after ten minutes, remains on the record as the actual facts of the case, hence the criminal liability of the defendant-appellant as author of Jaime Logronio's homicide.

We agree with the counsels for the people that there is no evidence to justify the existence of the extenuating circumstance of voluntary surrender to the police authorities. The indecency committed by the deceased on the person of the girl whom the defendant escorted on that occasion was a serious provocation and should be accounted for in favor of the defendant as mitigating circumstance, just the same. So, in the end, there are in this case three circumstances to extenuate the defendant's criminal responsibility, to wit; that he acted upon an impulse so powerful as naturally to have produced passion or obfuscation,

that he had no intention to commit so grave a wrong as was produced, and the first one mentioned above.

Judgment affirmed, with costs to appellant.

Reyes and Gutierrez David, JJ., concur.

Judgment affirmed.

[No. 2214-R. October 28, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
TRANQUILINO S. ROVERO, defendant and appellant

1. CRIMINAL LAW; VIOLATION OF SECTION 2703, REVISED ADMINISTRATIVE CODE (FRAUDULENT PRACTICE AGAINST CUSTOMS REVENUES); ESSENTIAL ELEMENTS OF THE OFFENSE; CASE AT BAR.—The act of the accused in cleverly concealing valuable jewelries in an innocent-looking Chinese flower vase and failing to declare them before the Customs employees with fraudulent intent on his part to cheat the Government of lawful duties, constitutes the offense of “fraudulent practice against Customs revenues”, punishable under Section 2703 of the Revised Administrative Code. The essential elements of this offense are (1) the entry or attempted entry of imported merchandise; (2) through any false or fraudulent declaration, and or by means of false or fraudulent practice whatever, or other willful act or omission, (3) by means of which the Government might be deprived of lawful duties.
2. *Id.*; SECTION 1292 AND 2703, REVISED ADMINISTRATIVE CODE CONSTRUED; SCOPE OF THE LAW.—Section 1292 of the Revised Administrative Code provides for an administrative penalty, while section 2703 thereof defines and punishes a criminal offense. In both sections, the consequences attached to the prohibited acts are of different nature, and Section 2703 is wider in its scope than section 1292. The mere fact that the act charged against the accused may be covered by the terms of both sections, does not preclude his prosecution under section 2703, and the institution against him of a separate administrative proceeding under section 1292, inasmuch as the former prescribes the criminal responsibility, while the latter, the civil liability, for the same prohibited act. The seizure and forfeiture authorized by section 1292 is not a part of the punishment for the criminal offense defined by section 2703, and irrespective of any criminal prosecution, forfeiture proceedings may be instituted, if the requisites of section 1292 are present. It seems that the law authorizes the proper authorities to prosecute both acts or any one of them, as they may deem fit.
3. *Id.*; *Id.*; ADMINISTRATIVE ACTION UNDER SECTION 1292, REVISED ADMINISTRATIVE CODE NOT NECESSARY BEFORE INSTITUTION OF CRIMINAL ACTION UNDER SECTION 2703.—The contention that in any case, before a criminal action under section 2703 is taken it is essential that there should have been a prior determination by the administrative authorities that section 1292 has been violated, is untenable. Under the law, no such requirement has been provided. It is of judicial notice, and it is in keeping with a general and sound practice, that an administrative proceeding is held in abeyance pending the outcome of the corresponding criminal action. To ingraft the provisions of section 1292 into section 2703 finds no justification at all, because the two sections are not intended to be reciprocally supplementary. And even if they were the “*pari materia*” rule is applicable only

when terms of statute to be construed are ambiguous or of doubtful significance. (Dupont, et al. *vs.* Mills et al., 196 A. 168.) In the present case, as has been stated heretofore, the scope of each section is clear and well defined.

4. *Id.*; *Id.*; SUBSIDIARY IMPRISONMENT; LAW APPLICABLE: ACT 1732.—Subsidiary imprisonment in cases of violation of section 2703 of the Administrative Code, should be imposed in accordance with the provisions of Act No. 1732.

APPEAL from a judgment of the Court of First Instance of Manila. Barrios, J.

The facts are stated in the opinion of the court.

Tranquilino S. Rovero in his own behalf.

Assistant Solicitor-General Barcelona and Solicitor Carreon for appellee.

PAREDES, J.:

This is an appeal from a decision of the Court of First Instance of Manila, finding Tranquilino S. Rovero guilty of a violation of section 2703 of the Revised Administrative Code and imposing upon him a fine of ₱2,500, with subsidiary imprisonment in case of insolvency, and costs. He alleged in his assignment of errors that the provision of law applicable in this case is section 1292 of the Revised Administrative Code, and not section 2703, and that the evidence did not show the guilt of the accused under the provisions of the last section.

At about 6 o'clock in the afternoon of April 25, 1947, Rovero, a practising attorney of Manila, arrived at the Makati Airport aboard a passenger plane from Bangkok, Siam. Pursuant to the Customs regulations, he filed a baggage declaration and entry, Exhibit C and, among the articles listed by him was a Chinese flower vase with a declared value of ₱15. To enable passengers to leave without unnecessary delay, the Customs officials requested them to segregate their baggages for immediate inspection. Rovero pointed out to Customs examiner Eugenio Pablo the articles listed in Exhibit C. Pablo then proceeded to examine the said articles one by one, but when he came to the shoes and the Chinese flower vase he decided to send them to the Parcels Section, Bureau of Customs, Port Area, Manila, for a more detailed inspection. Rovero then left, taking with him the rest of the articles mentioned in Exhibit C after paying the corresponding Customs duties thereof. The next day, a Saturday, at the Parcels Section, Chief of Customs Secret Service, James H. Keefe, was suspicious of the form of the flower vase. Against the advice of the Chief, Legal Division of the Bureau of Customs, and over the objection of the Chief, Parcels Section, because the owner thereof was not then present, Keefe cracked the Chinese flower vase open and found cleverly concealed inside, by a false cement bottom, a can containing 259 pieces of jewelry with precious stones, appraised at \$11,868, or

P23,736. The following Monday, April 28, Rovero, after having read in the Sunday papers about the discovery of jewelries in the vase, presented himself at the Customs House to claim the vase and the jewelries, offering to pay the duties due thereon and protesting against the procedure adopted by Keefe. Because the jewelries became subject to seizure, his offer and protest were ignored.

Rovero admitted having concealed the jewelries in the vase, and having intentionally omitted to mention them in his baggage declaration and entry, Exhibit C, but alleged it was not his intention to defraud the Government. He explained that, anticipating the arrival of his plane at night time, he wanted to avoid being victimized by robbers who were then allegedly infesting the road between Makati Airport and Manila; that he did not even want anybody in the Airport to know the existence of the jewelries in the vase; and that, not having sufficient funds to pay for the duties due on the articles concealed, he spent the whole day of Saturday to raise the necessary amount, but in view of the fact that the intervening day was Sunday, he was only able to go to the Bureau of Customs on the following Monday.

The two sections under consideration are hereunder reproduced:

"SEC. 1292. *Failure to declare baggage.*—Whenever any article subject to duty is found in the baggage of any person arriving within the Philippine Islands, which was not at the time for making entry of such baggage mentioned to the collector or other proper customs official before whom such entry was made by the person making entry, such article shall be seized, and the person in whose baggage it is found may be required to pay treble the value of such article unless it shall be established to the satisfaction of the collector that the failure to mention or declare was without fraud."

"SEC. 2703. *Various fraudulent practice against customs revenues.*—Any person who makes or attempts to make any entry of imported or dutiable exported merchandise by means of any false or fraudulent invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice whatever, or shall be guilty of any willful act or omission by means whereof the Government of the Philippine Islands might be deprived of the lawful duties, or any portion thereof, accruing from the merchandise or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, shall, for each offense, be punished by a fine not exceeding P5,000 or by imprisonment for not more than two years, or both."

We believe that section 2703 has been correctly applied by the trial court. The prosecution has substantiated the essential elements of this offense which are (1) the entry or attempted entry of imported merchandise; (2) through any false or fraudulent declaration, and or by means of false or fraudulent practice whatever, or other willful act or omission, (3) by means of which the Government might be deprived of lawful duties.

There is no question that the jewelries in question are dutiable goods, were landed in the airport purposely concealed in a vase and were intentionally omitted by the appellant from his baggage declaration and entry, Exhibit C. Appellant's allegation that it was his intention to let the vase remain with the Customs employees, and then obtain its release during daytime when it would be safer to transport the jewelries hidden therein, is without merit, to say the least. Had not Examiner Pablo found the vase too bulky for a careful and detailed examination at the time of the appellant's arrival at the airport, the vase and its precious contents would have been released to him as were the other articles listed in the said declaration, without payment of the corresponding Customs duties. The fact that the appellant had already segregated all the articles, including the Chinese flower vase, listed in his declaration, in order that they could be examined and immediately released, and that at the time the articles were, one by one, examined, the appellant had not requested or suggested the postponement of the examination of the said Chinese vase, clearly indicates an attempt on his part to obtain the release of the said Chinese vase to him on the night of his arrival, without disclosing to the Customs authorities the existence of its contents, and making the corresponding amendments in his baggage declaration and entry.

The concealment of jewelries by the appellant in this particular case constitutes a fraudulent practice. The declaration Exhibit C, where the value of the vase was made to appear as P15, when, as a matter of fact, it contained costly jewelries, valued at \$11,868, hidden therein, was false. In order not to defraud the Government of its lawful duties, the Legislature requires importers and passengers to make truthful declarations, under pain of fine or imprisonment. The appellant's bare statement that it was not his intention to defraud the Government, should not be taken on its face value, especially considering the fact that the said statement was made after the discovery of the concealed jewelries. The mere fact that the appellant cleverly concealed valuable jewelries in an innocent looking Chinese flower vase and failed to declare them before the Customs employees, raises a strong presumption of fraudulent intent on his part to cheat the Government of lawful duties. It also appears that appellant had already made three trips outside the Philippines prior to April 25, 1947; and that on his return from one of his trips to Bangkok, there were seized from his person two precious stones hidden in his wallet, which he had failed to include in his declaration and entry, for which he was fined three times the amount of duties due on the articles. On the night of April 25, some one attempted to bribe the Customs guard

at the airport in charge of the articles left there at that night, by offering him ₱6,000 to bring one of the several flower vases outside the Airport. While that person had not been identified to be the appellant, as no one except the appellant knew that valuable jewelries were concealed in a flower vase brought by him from Bangkok, the logical conclusion would be that the person who attempted to corrupt the Customs guard with such a handsome amount, was no other than the one who acted for the appellant.

The appellant's contention that he was afraid of being victimized by highway robbers, is indeed hard to believe. A lawyer, as he is, knew or should have known that he could ask for police protection in such cases, if necessary. It is rather strange that although he was fearful of risking a short trip between Makati Airport and Manila, he was willing to run the risk of losing the jewelries at the airport for any mishap therein, with little or no chance, of recovery, against the Customs employees, because of his failure to include the jewelries in his declaration and entry. It appearing that among the articles mentioned in the appellant's baggage declaration and entry, there were also five rings and two pairs of diamond earrings, with a declared value of \$90 (Exhibit C), the alleged fear of being victimized by robbers is simply chimerical. The appellant's explanation that these pieces of jewelries were purchased by his wife on the evening of their departure from Bangkok, and it was too late to include them in the vase, finds no corroboration at all, as his wife was not presented to testify. The declaration of these few pieces of jewelries is simply a way of sidetracking the fact he had a greater quantity of more valuable jewelries hidden in the Chinese flower vase.

A legal question has been raised as to the applicability of section 1292 in preference to section 2703. A careful study of these two sections, heretofore reproduced, would show that section 1292 provides for an administrative penalty, while section 2703 defines and punishes a criminal offense. In both sections, the consequences attached to the prohibited acts are of different nature, and section 2703 is wider in its scope than section 1292. The mere fact that the act charged against the appellant may be covered by the terms of both sections, does not preclude the prosecution of the appellant under section 2703, and the institution against him of a separate administrative proceeding under section 1292, inasmuch as the former prescribes the criminal responsibility, while the latter, the civil liability, for the same prohibited act. The seizure and forfeiture authorized by section 1292 is not a part of the punishment for the criminal offense defined by section 2703, and irrespective of any criminal prosecution, forfeiture proceedings may be instituted, if the requisites of section 1292 are pre-

sent. It seems that the law authorizes the proper authorities to prosecute both acts or any one of them, as they may deem fit.

It is further contended that in any case, before a criminal action under section 2703 is taken, it is essential that there should have been a prior determination by the administrative authorities that section 1292 has been violated. We believe, however, that under the law, no such requirement has been provided. It is of judicial notice, and it is in keeping with a general and sound practice, that an administrative proceeding is held in abeyance pending the outcome of the corresponding criminal action. The appellant also claims that under section 1292, an incoming passenger has the right to amend his baggage declaration and entry and to correct any deficiency thereof, by merely mentioning to the Collector or other Customs officials of the existence of undeclared dutiable articles in his baggage, before the same is examined by the Customs examiner, in order to avoid incurring in the penalty under the law. In other words, the appellant seeks to ingraft the provisions of section 1292 into section 2703, which finds no justification at all, because the two sections are not intended to be reciprocally suppletory. And even if they were, the "*pari materia*" rule is applicable only when terms of statute to be construed are ambiguous or of doubtful significance. (Dupont et al. *vs* Mills et al., 196 A. 168.) In the present case, as has been stated heretofore, the scope of each section is clear and well defined. Appellant, in support of his proposition, cites two Federal court decisions (U.S. *vs* One Trunk, 184 Fed. 317, and U. S. *vs* One Pearl Necklace, 111 Fed., 164), interpreting a Federal statute similar to section 1292. We have carefully gone over these cases, and it is our belief that the facts and circumstances attending said cases are different from those obtaining in the present cases, and consequently they are not applicable herein. Moreover, the present prosecution is not predicated upon the provisions of said section 1292, but upon section 2703.

From the factual point of view, it is also evident that appellant had not complied with the requisites of section 1292 regarding his right to amend his false baggage declaration. Appellant himself concedes that such right should be exercised by the passenger before seeking the release of the imported articles and before their examination. It appears, however, that appellant had all the articles mentioned in Exhibit C segregated for inspection by Examiner Pablo and for release to him, and that after said inspection, he did not request or suggest the postponement of the examination in order to amend his baggage declaration. If he had been acting in good faith, he could have gone to the Bureau of Customs early the next morning of his arrival to amend his baggage declaration,

knowing, as he did, that his vase was there for detailed examination, and that at any moment his secret might be discovered. But appellant bided his time and adopted the attitude of "watchful waiting," to see how the stratagem would work. Great hazards involve great responsibilities and offer great benefits. The appellant reaped the first.

The judgment appealed from is affirmed, with costs. Subsidiary imprisonment, however, should be imposed in accordance with the provisions of Act No. 1732. So ordered.

Labrador and Reyes, JJ., concur.

Judgment affirmed.

[No. 2724-R. October 28, 1948]

FELISA DONATO, for herself and as Guardian ad-litem for DOLORES, JOSEFINA and BIENVENIDO, all surnamed ZABALA, plaintiffs and appellees, *vs.* JULIUS MAURICE, defendant and appellant.

1. WORKMEN'S COMPENSATION ACT; "GROSS NEGLIGENCE," DEFINED.—"Gross negligence" has been defined as "the want of even the slight care. * * * It implies such an utter disregard of consequences as to suggest something of an intent to cause injury. * * * The term 'gross negligence' * * * implies a wilfulness in pursuing a course of conduct which would naturally result in injury to another (38 Am. Jur., pp. 690-691). The definitions just quoted refer to gross negligence committed resulting in injury to person or property of another. In the instant case, the term "gross negligence" is used to indicate the conduct which a working man pursues with a clear consciousness of the consequences which endanger his own life, and hence a greater degree of wantonness and disregard of consequences should be required than that required to constitute "gross negligence" which endanger the person or property of another.
2. *Id.*; *Id.*; ACT OF THE DECEASED WORKMEN, NOT AMOUNTING TO GROSS NEGLIGENCE; COMPENSABLE UNDER THE WORKMEN'S COMPENSATION ACT; CASE AT BAR.—The act of the deceased in reentering the kitchen of the Snack Bar, where he was working as the head cook, while the same was on fire is not gross negligence. He did it in company with two American MPs who, like the deceased, were armed with extinguishers. He did not take any more chances than the two American MPs. Their chances of suffering burns in going into the kitchen while the same was burning must be alike. There is no evidence on record that he disregarded all the consequences in committing the act. Neither is there any evidence to show that he had the slightest intention of ending his life (*Flores vs. Mindanao Lumber Company, SC-G.R. No. 430396, May 28, 1945*). The deceased was prompted by a strong desire to serve the best interests of his employer to the fullest extent of his ability and with the means which the employer himself furnished for that purpose, a conduct highly commendable on the part of employees and laborers, which should be encouraged and rewarded than punished. Had his efforts been successful, the defendant would have necessarily received the benefit. But if the result has been otherwise, as in this case, the defendant should likewise

be justly held responsible. He who may be benefited by an act should run the risk thereof. (Decision of Supreme Court of Oklahoma dated July 12, 1921, in *Associated Employers Reciprocal vs. State Industrial Com'n.*, 200 p. 174.)

APPEAL from a judgment of the Court of First Instance of Manila. Dinglasan, J.

The facts are stated in the opinion of the court.

Salvador C. Reyes for appellant. *Cecilio I. Lim* and *Roberto Ancog* for appellees.

RODAS, J.:

From the evidence adduced for the defendant, it appears that on January 28, 1947, Conrado Zabala, head cook, ordered his assistant, Conrado Martin, to light one of the stoves in the kitchen of Snack Bar No. 3, situated at Vito Cruz, Manila, owned and operated by the defendant Julius Maurice. Conrado Martin brought to the kitchen a drum of gasoline and tried to open it to fill the stove he was ordered to light. As he could not open the drum, Zabala opened it himself and in doing so, the gasoline spilled near the stove and a fire broke out.

By order of Juan Orabia, the manager of the Snack Bar, everybody left the kitchen, including Conrado Zabala. The latter, however, went in again, in company with two American MPs, with fire extinguishers for the purpose of putting out the fire. Unfortunately, however, Conrado Zabala caught fire and suffered burns, which three days after brought about his death at the Philippine General Hospital, where he was sent to by the defendant. The two American MPs escaped the fire harmless.

After the service on the defendant of the necessary notice of injury and claim for compensation which the said defendant has refused to pay, Felisa Donato, the widow, and her three children, Dolores, Josefina and Bienvenido, represented by her as guardian *ad litem*, all of whom being total dependents of the said deceased, Conrado Zabala, filed on April 18, 1947 the corresponding complaint in which she alleged substantially that Conrado Zabala in the performance of his duties as chief cook of the defendant at Snack Bar No. 3 on January 28, 1947 suffered burns as a result of the explosion of a drum of gasoline in the kitchen of said Snack Bar, which caused his death three days later at the Philippine General Hospital.

In due time defendant filed his answer denying generally all the allegations set forth in all the seven paragraphs of the complaint, and setting forth by way of specific defense that the "deceased Conrado Zabala was injured and later died of wounds sustained by him thru his own notorious negligence," and hence, that plaintiffs are not entitled to any compensation under Act No. 3428, as amended, and that the facts alleged in the complaint do not fall within or

under the provisions of said Act, known otherwise as the Workmen's Compensation Act.

On account of the failure of the defendant to deny specifically the allegations of the complaint in the manner provided for in section 7, Rule 9, of the Rules of Court, plaintiffs, relying on the complaint, the allegations of which were deemed admitted because of the failure of the defendant to deny them specifically, waived their right to produce evidence in support of said allegations and rested their case. The only evidence, therefore, to be considered is that produced by the defense, the substance of which has been set forth above and on which defendant bases his contention that Conrado Zabala did not receive the burns or injuries, which brought about his death, from any accident due to and in the performance of his employment, but received said injuries or burns by his own notorious negligence.

Turning to the first question as to whether the burns received by the deceased arose out of or in the course of his employment, it should be stated that Conrado Zabala was in the kitchen of the Snack Bar No. 3 on the day and at the time of the accident as chief cook; that his act of ordering his assistant Conrado Martin to prepare and light one of the stove in the kitchen was a part of his duties; and that the opening of the drum near one of the burning stoves and the explosion of the drum was an accident arising from the performance of such duties. The fact that the gasoline caught fire was an accident which was not looked for and an untoward event which was not expected by the deceased, and that said accident arose out of and in the course of the performance of his duties. As to whether he committed an act of imprudence or of gross negligence in the production of said accident is the only matter to be determined by this court and it involves necessarily the determination of the question that Conrado Zabala was guilty of gross negligence.

In the first place, the defense asserts that there was a standing verbal regulation to store gasoline away from the kitchen and not to take gasoline therein. Notwithstanding, however, this alleged verbal regulation, according to Conrado Martin, employees of said Snack Bar were in the custom or habit, for about three months prior to the day of the accident, of taking gasoline in the kitchen when there were many customers, and they have been used to it to such an extent that said employees believed said practice safe, same having been followed during said period of three months notwithstanding the fact that the manager, Juan Orabia, used to inspect the kitchen especially in the morning. No untoward accident happened during said period. This being the case, Conrado Zabala cannot be blamed altogether for the accident for he had just been following a standing practice for three months, presumably with the knowledge, consent and toleration of his superiors who

ought to have known said practice had they themselves been rigid in the observance of said regulation to avoid such accident as that which took place on January 28, 1947.

It is a fact and the defendant himself so alleges, that Conrado Zabala emerged from the kitchen after the first explosion unhurt, and that the burns that caused his death were received by him during the time he, together with two American MPs, reentered the kitchen armed with fire extinguishers for the purpose of putting out the fire, notwithstanding the alleged prohibition made by Juan Orabia to do so during the fire until the arrival of the fire engine which he had called for by telephone. The fire extinguishers which the two American MPs and the deceased, Conrado Zabala, took into the kitchen for the purpose of extinguishing the fire were duly provided for in the establishment of the Snack Bar No. 3. Those fire extinguishers were there obviously for the express purpose of putting out any fire which may break out in said establishment. Had Conrado Zabala alone reentered the kitchen with a fire extinguisher and tried to put out the fire single handed, he might very well be called grossly imprudent or negligent, but yet not so grossly negligent as required by the workmen's Compensation Act so as to exempt defendant from responsibility.

"Gross negligence" has been defined as "the want of even the slight care. * * * It implies such an utter disregard of consequences as to suggest something of an intent to cause injury. * * * The term 'gross negligence' * * * implies a wilfulness in pursuing a course of conduct which would naturally result in injury to another." (American Jurisprudence, Vol. 38, pp. 690-691.) The definitions just quoted refer to gross negligence committed resulting in injury to person or property of another. In the instant case, the term "gross negligence" is used to indicate the conduct which a working man pursues with a clear consciousness of the consequences which endanger his own life, and hence a greater degree of wantonness and disregard of consequences should be required than that required to constitute "gross negligence" which endanger the person or property of another.

In the case of *Flores vs. Mindanao Lumber Company*, SC-G. R. No. 430396, May 28, 1945, the following doctrine was laid down:

"The laborer is presumed to take the necessary precautions to avoid injury to himself, unless an intention is attributed to him to end his life. The presumption is based on the instinct of self-preservation."

The deceased Conrado Zabala did not at all commit any act of gross negligence when he reentered the kitchen of the Snack Bar No. 3 while the same was on fire, because he did not do it alone. He did it in company with two American MPs armed, likewise, with fire extinguishers. These two MPs emerged from the kitchen unhurt. Only Conrado

Zabala caught fire and suffered burns. He did not take any more chances than the two American MPs. Their chances of suffering burns in going into the kitchen while the same was burning must be a like. He could not, therefore, be found guilty of gross negligence for having met his death. There is no evidence on record that he disregarded all the consequences in committing the act. Neither is there any evidence to show that he had the slightest intention of ending his life.

The deceased was prompted by a strong desire to serve the interests of his employer to the fullest extent of his ability and with the means which the employer himself furnished for that purpose, a conduct highly commendable on the part of employees and laborers, which should be encouraged and rewarded rather than punished. Had his efforts been successful, the defendant would have necessarily received the benefit. But if the result has been otherwise, as in the case at bar, the defendant should likewise be justly held responsible. He who may be benefited by an act should run the risk thereof.

Our views are entirely on all fours with the decision of the Supreme Court of Oklahoma, dated July 12, 1921, in the case of *Associated Employers Reciprocal vs. State Industrial Comm.*, 200, p. 174, which reads as follows:

"* * * The substance of the contention is that it was none of the duties of the claimant under his employment to fight fire. A casual statement of the contention demonstrates the absurdity of the contention. While it is true he was not employed to fight fire, it is obvious that he would be an unworthy servant if he stood idly by and watched his employer's property destroyed by fire without making any effort to protect it."

Taking for granted that the two witnesses for the defendant had been true to their oath, their testimony shows that the defendant was the one to blame for the accident. Had he used the utmost diligence in preventing the storing and use of gasoline in the kitchen of the Snack Bar No. 3; had he or his manager not relaxed in the supervision of the manner in which gasoline was being used to fill and light the stoves in the kitchen, the conduct observed by Conrado Zabala which had been followed for three long months by him, his assistant and other employees of the Snack Bar should have been noticed and stopped, but no effort was proven to have been taken to notice the existence of such conduct and practice and much less to check or prevent its continuance.

The honorable trial judge made in his decision the following findings of fact:

"It is admitted by the witnesses for the defendant, however, that for a period of three months before the fire broke out, gasoline drums had been kept in the kitchen. The court cannot believe that at the time of the accident the rule prohibiting the bringing of gasoline drums in the kitchen was being enforced, if such a prohibition had really been made."

As has been stated above, the defendant in his answer failed to deny specifically the allegations of the complaint and to state any specific defense to the effect that the deceased Conrado Zabala ordered his assistant Conrado Martin to take inside the kitchen a drum of gasoline for the purpose of filling a stove and lighting it and opening the same near a burning stove against the standing verbal regulation enforced at the time, and for a long time before, that no drum of gasoline should be taken inside the kitchen and no stove should be filled with gasoline and lighted therein; and that said Conrado Zabala, acting with gross negligence and with complete disregard of all the consequences, re-entered the kitchen of the Snack Bar No. 3 against the prohibition given by Juan Orabia with a fire extinguisher for the purpose of putting out the fire, thus suffering burns which brought about his death. The failure on the part of the defense to set up specifically these allegations in his answer shows that there was no such defense, for in truth and in fact there was no verbal regulation prohibiting the storage and use of gasoline in the kitchen, and again, that Juan Orabia did not prohibit the deceased or anybody else from entering the kitchen while the same was on fire.

The other findings of the trial judge, especially that concerning the amount advanced by the defendant, to wit, P871, which should be deducted from the total award of P3,000 has not been questioned in this appeal and hence need not be discussed and should not be disturbed.

In view of the foregoing, the court is of the opinion that Conrado Zabala died as a result of an accident arising out of and in the course of his employment, and hence is entitled to the compensation awarded to him by the lower court in the sum of P3,000, from which should be deducted the sum of P871 which had been advanced by the defendant and received by the plaintiffs. With costs against the defendant.

Jugo and De la Rosa JJ., concur.

Judgment affirmed.

[No. 2347-R. Octubre 29, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra*
ANIANO VARONA y PAULINO GONZALES, acusados y
apelantes.

[No. 2348-R. Octubre 29, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra*
ANICETO SOMES y JESUS DIODOCO, acusados y apelantes.

DERECHO PENAL; ATENTADO A LOS AGENTES DE LA AUTORIDAD;
REQUISITO ESENCIAL DEL DELITO; CASO DE AUTOS.—Es requisito
esencial del delito de atentado, según jurisprudencia, que el
acusado haya sabido o debió haber sabido de antemano que el

ofendido era una autoridad o agente de la autoridad. La prueba en este caso debe ser de tal suerte que infunda en el ánimo del tribunal el convencimiento moral de que el acusado sabía o debió haber sabido este hecho. Cuando hay duda racional, el acusado debe ser absuelto. En el caso de un policía que verifica un arresto en cumplimiento de su deber y es objeto de atentado o resistencia, el hecho de que éste no estaba vestido de su uniforme de policía no excusa al acusado, siempre que existe prueba, directa o circunstancial, por la cual se pueda concluir, fuera de toda duda racional, que el acusado sabía o debió haber sabido que aquél era un policía o agente de la autoridad. Habiéndose probado que los aquí acusados estaban en el círculo en medio del cual se jugaba al juego prohibido de "hantak" en Trading, ciudad de Dávao, en la mañana del 13 de junio de 1947, y se resistieron a su prendimiento haciendo uso de la fuerza y violencia en las personas de los policías de la ciudad que eran agentes del orden público a quienes como tales o debieron haberlo sabido porque además de portar carabinas y pistola se habían dejado de conocer como agentes de la autoridad y estos se fueron a aquel lugar y verificaron el prendimiento en cumplimiento de su deber en virtud de una orden de su jefe, fuerza es concluir que los aquí acusados son culpables del delito de *atentado a los agentes de la autoridad*, según está definido y penado por el artículo 148 del Código Penal Revisado.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Dávao. Fernández, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Ariston I. Rivera en representación de los apelantes.

El Procurador General Auxiliar Sr. Rosal y *el Procurador Sr. Villamor* en representación del apelado.

BORROMEIO, M.:

Aniano Varona y Paulino Gonzáles, en la causa criminal No. 239, y Aniceto Somes y Jesús Diodoco, en la causa criminal No. 279, del Juzgado de Primera Instancia de Dávao, cumas causas guardan intima relación por referirse a un solo hecho delictivo en una sola ocasión por lo que fueron vistas y decididas conjuntamente, recurren a esta Corte en apelación para que se revoquen sus respectivas sentencias y, consecuentemente, sean absueltos de la acusación, porque, según los fundamentos señalados en su alegato, (1) "El juzgado inferior erró al sostener la teoría de que los acusados apelantes sabían que los policías no uniformados eran agentes de la autoridad por la única razón de que estaban armados de carabinas y pistola", y (2) "Dicho tribunal arró al decidir que los acusados-apelantes eran culpables del delito querrellado basándose en evidencia insuficiente para sostener una convicción de su culpabilidad fuera de toda duda racional."

Resulta de las pruebas aportadas al juicio, que en la mañana del 13 de junio de 1947, el inspector Camus de la policía secreta de la Ciudad de Dávao, había dado órdenes

a los policías Ernesto Luna, Teodulfo Mendoza, Remigio Gubatanga, Federico Punsalan, Santiago Bangayan y Eusebio Guevara para asaltar el sitio de Trading, donde se jugaba a los prohibidos, el juego de "hantak".

Trading es un lugar de la Ciudad de Davao dentro de la reserva militar pero que está separado por la avenida Quezon de la porción de dicha reserva cercada y ocupada por la policía militar del ejército filipino. Allí había varias casas donde habitaban soldados de la policía militar y otros particulares, y en el río situado a un lado fondeaban lanchas militares y de particulares así como barcas de pescadores y comerciantes de pescados y otros productos, de suerte que por allí entraban y salían personas particulares sin el permiso de los militares. Tampoco había ningún guardia del ejército, ni señales por las cuales se podía conocer que es parte integrante de la reserva. Como ya había hecho asaltos exitosos en Trading en ocasiones anteriores, la policía de la ciudad conocía bien este lugar.

Cuando los policías arriba nombrados se acercaron al sitio, vieron que allí había un grupo de más de veinte individuos que formaban un círculo, y quince de ellos eran miembros de la policía militar. Entonces, el que encabezaba a los asaltantes, el policía Luna, ordenó a sus compañeros que se apostasen detras de una casita, situada a unos cuantos metros de aquel círculo, instruyéndoles que procedieran al asalto al momento de su consigna, y en el entretanto él se situó detras de los que estaban formando el círculo atentos al juego que, según observación de Luna, era de "hantak". Un minuto después que hubo hecho la observación se dió la señal de asalto, sus compañeros se abalanzaron y Luna gritó a los que formaban el círculo, "Do not run, we are officers of the law."

Algunos se echaron a correr, pero Luna pudo coger a uno de los jugadores. Sin embargo, el acusado Aniano Varona, un policía militar que era también uno de los jugadores, le dió por detras un puñetazo en la nuca, y al volver la cara recibió otro puñetazo de otro jugador, el acusado Paulino Gonzáles, también un policía militar.

Otro policía militar de aquel círculo de jugadores, el acusado Jesús Diodoco, trató de apoderarse de la carabina que portaba Luna, y durante la lucha el policía Gubatanga que estaba sujetando a uno de los jugadores, soltó a éste para posesionarse de la carabina, evitando de esta suerte que el arma cayera en poder de Diodoco.

Mientras Luna tambaleaba por los golpes recibidos, otro policía militar que formaba el círculo de jugadores, el acusado Aniceto Somes, dió un puntapie a aquél en el estómago de cuyas resultas Luna cayó en el agua. Al levantarse, vió a Diodoco parado al borde del río con una piedra grande, y dirigiéndose al que tenía al arma dijole, "si

no me entregas el carbine, te mataré”, y Gubatanga hubo de entregarle el arma.

Somes trató de apoderarse de la carabina del policía Punsalan y durante la lucha por su posesión intervino Diodoco, quien consiguió apoderarse del magazine del arma. A ruego de Punsalan, el sargento Ortiz de la policía militar intervino, y después de hablar en voz baja a Somes, éste desistió de su empeño de apoderarse de la carabina.

Durante el ataque los policías Luna, Gubatanga y Punsalan gritaban a los atacantes que eran policías, pero los acusados persistieron en su ataque. Aquéllos, por el ataque de que fueron objeto, no pudieron arrestar a los jugadores ni apoderarse de los instrumentos usados en el “hantak” que eran tres centavos y una piedra, de ahí que no se presentó ninguna denuncia contra los aquí acusados y los compañeros de éste por infracción de la ley de juego.

En la mañana del día de autos, Romualdo Jereza, entonces teniente de la policía de la ciudad estando en el cuartel de la policía militar que distaba sólo unos 150 metros del lugar del juego, se enteró del incidente y se fué a aquel lugar donde vió al policía Luna con la cara sangrienta y la ropa manchada de sangre. Luego condujo a Luna, Gubatanga, Punsalan, Bangayan, Mendoza y Guevara al cuartel de la policía militar donde el capitán José Maneja practicó una investigación del caso. Éste puso en fila a algunos de sus soldados y de entre éstos los policías agredidos identificaron a los aquí acusados como sus agresores. El capitán aseguró a los ofendidos que sometería a los señalados agresores a una acción disciplinaria. Después de la investigación, Luna y Gubatanga fueron conducidos al hospital público de Davao donde fueron tratados por el jefe de la institución, Dr. Manuel P. Babao. Según el facultativo, Remegio Gubatanga tuvo contusión con rasguño algo severo en la cabeza, lado izquierdo y rasguños en la pierna derecha que se curarían de 7 a 9 días, y Ernesto Luna, contusiones en la mejilla izquierda, cuello, severa en la región epigástrica, en la nariz y en la región supra orbital que se curarían de 10 a 15 días.

En el análisis de las pruebas de la defensa, el juez sentenciador, Honorable Enrique A. Fernández, dijo:

“La defensa pretende, que los acusados Varona, Gonzáles y Somes fueron al Trading en la mañana del día de autos por orden del acusado Diodoco, entonces cabo de guardia, para sorprender el juego de “hantak”. A juicio del Juzgado esta contensión es insostenible. Primero, las pruebas obrantes en autos demuestran, que el suceso de autos ocurrió las 10:45 de la mañana. Diodoco contestando a las preguntas del Juzgado, afirma que en el día de autos, sus coacusados no estaban de guardia; que el (Diodoco) no estaba de guarda, ni era cabo de guardia al tiempo en que ocurrió el suceso de autos; y, que sus horas de guardia (Diodoco) comenzaban desde la 1:00 a 3:00 de la tarde del día de autos; segundo, no existen pruebas en autos, que los acusados no estando de guardia, fueron asignados por sus superiores, o por el oficial de guardia para sor-

prender el juego de "hantak" o que Diodoco no estando de guardia, estaba autorizado por sus superiores para ordenar a sus coacusados a sorprender el juego en el lugar indicado.

"La defensa pretende, que en el momento del asalto las personas congregadas en el Trading no estaban jugando al "hantak". A juicio del juzgado esta contensión es insostenible. Primero, el testigo de la defensa Gaudibio Pastoral, así como los acusados Varona, Gonzáles y Somes declararon que en la mañana del día de autos las 15 personas congregadas en el Trading no estaban jugando al "hantak"; que cuatro minutos antes del asalto, un tal Patricio, en una banca llegó al Trading llevando 15 kilos de pescados de dos pulgadas de tamaño que las 15 personas que entonces se encontraban en el lugar entre estas los acusados, en espera de pescados fueron advertidos por Patricio, que sus pescados los vendería en el mercado público—que está a un kilómetro y medio poco más o menos del lugar del suceso de autos—; que en el momento del asalto las 15 personas entre estas, los acusados Varona, Gonzáles y Somes formaban un círculo viendo los pescados de Patricio, quien entonces estaba esperando un vehículo para conducir sus pescados al mercado. Las pruebas de la defensa demuestran que los comerciantes de pescados en aquel lugar. Este hecho demuestra que no había razón alguna por parte de Patricio para llevar sus pescados al mercado, pues vendiéndolos en el Trading se ahorraría de molestias, tiempo y del pago de transportación llevándolos al mercado público. Segundo, es increíble que las 15 personas congregadas en el lugar después de advertidas por Patricio, que vendería sus pescados en el mercado formaran un círculo por cuatro minutos para ver y admirar los pescaditos. Tercero, el Capitán José Maneja asevera, que en la investigación practicada por el, el policía Luna en presencia de los policías compañeros de este, la había dicho que en el momento del asalto no vio jugando al "hantak" a las personas que formaban el círculo. El Juzgado se resiste a dar crédito a esta fase del testimonio de Maneja, pues este al ser preguntado por el abogado defensor, si el policía Luna le había dicho que había visto a la gente jugando al "hantak", por varios segundos no contestó a esta pregunta sencilla, y aquel tuvo que formular por segunda vez la misma pregunta para arrancar del testigo la contestación deseada, esto es, que Luna de había dicho que no vio a las personas jugando al "hantak" en el momento del asalto. Cuarto, Maneja en el curso de su testimonio, asevera que después de la investigación a que fueron sometidos los policías practico una inspección ocular en el lugar donde ocurrió el suceso de autos, y opina que en el no podía jugar al "hantak". Considerando esta fase del testimonio de este testigo, el Juzgado es de opinión que, si el policía Luna había asegurado a Maneja que no vio a la gente jugando al "hantak", no había necesidad por parte de dicho oficial de practicar aquella inspección ocular, pues el testimonio de Luna y el silencio de los compañeros de este, constituían la mejor prueba, que en el momento del asalto no se jugaba al "hantak". La actitud de Maneja al practicar aquella inspección indica que Luna y los compañeros de este, habían informado a Maneja, que los acusados y los compañeros de estos estaban jugando al "hantak". Quinto, Romuáldo Jereza, testigo de la defensa, que desde el mes de agosto pasado se separó del cuerpo de la policía asevera que los policías en el día de autos le habían informado en el lugar de suceso, que en el momento del asalto no habían visto a la gente jugando al "hantak." Contestando, sin embargo, a una de las preguntas del Juzgado, Jereza admitió que en su informe verbal al jefe de policía en relación con lo ocurrido, no había dicho a aquel que los policías le habían dicho, que no vieron a la gente jugando al "hantak" en el momento del asalto. Para el Juzgado, el agente del orden público que oculta la verdad a su jefe en un informe oficial no puede merecer ningún crédito en este Juzgado.

"La defensa pretende que los policías, que no estaban uniformados no se dieron a conocer en el momento del asalto de que eran agentes del orden público. A juicio del Juzgado esta contensión es insostenible. Las pruebas en autos demuestran que los policías en cumplimiento de una orden de su jefe inmediato asaltaron el lugar del suceso de autos y trataron de arrestar a los jugadores. Este hecho, a juicio del Juzgado, hace increíble la teoría de la defensa, que los policías ocultaron su identidad aun cuando se vieron confrontados por la resistencia al arresto ofrecida por los acusados. Aceptando la teoría de la defensa, la mente honrada tendría que admitir que los policías al efectuar el asalto estaban animados por el deseo de cometer un acto ilegal, así burlarse de la justicia en perjuicio de los acusados; pero examinando las pruebas aducidas en juicio, estas demuestran que, tres de los policías estaban armados en el día de autos, dos de ellos de carbine y el otro de pistola; que dos de los policías resultaron heridos, uno de aquellos fue desarmado, y el "magazine" del carbine de Punsalan se apodero el acusado Diodoco; y, que los acusados en el día de autos no estaban armados. No obstante estos datos, los policías mantuvieron su serenidad, no hicieron uso de sus armas para repeler la agresión de los acusados, evitando así un posible encuentro entre dos cuerpos armados que podría haber causado consecuencias fatales. Esta actitud de los policías no solamente es laudable, sino que es una indicación patente de que al asaltar el juego en el día de autos, aquellos no estaban animados por ningún otro propósito, que no sea el de cumplir con sus deberes oficiales.

"La defensa pretende que el acusado Varona recibió contusiones durante la lucha trabada con los policías. Los acusados aseveran que estando Varona luchando con Luna por la posesión del carbine que este último portaba, Gubatanga dio un golpe con la culata de su carbine que tocó en el hombro de Varona. En apoyo de esta teoría la defensa presentó como prueba el exhibito "4" que copiado, se lee:

"This is to certify that I have personally treated PVT. Varona, A. Inf. of the 89th MP Company from 12 to 15 June 1947 of his bruise at the back of the right side of the upper extremity. The routine treatment takes place in the Dispensary of the Medical Inspector MPC (AP) Davao City.

"CESAR LEYSON, MS
"Clerk Med. Insp. Office"

"A juicio del Juzgado la pretensión de la defensa es insostenible. Primero, es de conocimiento judicial que la policía militar de Davao cuenta con un hospital con su personal de doctores, enfermeros o sanitarios; sin embargo, el exhibito "4" está suscrito por César Leyson, "clerk" del departamento médico de la policía militar. Segundo las pruebas demuestran asimismo, que los únicos policías que estaban armados en el día de autos eran Luna, Punsalan y Bangayan, los dos primeros de carbine, y Bangayan de pistola; que mientras Varona y Luna estaban luchando por la posesión del carbine que este último portaba, para evitar que Varona se apoderase de dicha arma, Gubatanga intervino y consiguió arrebatarlo de los contendientes. Estos datos demuestran claramente que era para Gubatanga materialmente imposible golpear con la culata de un carbine a Varona en el momento en que este estaba luchando con Luna, porque entonces no estaba armado, ni tenía aun en su poder el carbine de Luna.

"La defensa pretende que el acusado Gonzáles en el día de autos tenía todo el cuerpo dolorido por los golpes recibidos; que Luna le pegó con la culata de un carbine, y varios puñetazos le propinaron dos de los policías. A juicio del Juzgado esta pretensión es improbable. Como ya se ha dicho, la policía militar cuenta con un hospital, doctores, enfermeros o sanitarios. El hecho de que la defensa no ha

presentado un certificado médico, salta en la mente del Juzgado cierta duda sobre la veracidad de la existencia de las alegadas contusiones.”

En el alegato de los apelantes se hace especial hincapie en el hecho de que los policías de la ciudad en aquella ocasión no estaban uniformados. Por tanto, se arguye, no cabe apreciarse aquí la existencia del requisito esencial del delito, o sea, el conocimiento de los acusados de que aquellos eran agentes de la autoridad, y en apoyo de esta contención se cita la causa de E. U. *contra* Alvear et al., 35 Phil., 626. En aquella causa, sin embargo, las pruebas eran que los dos soldados constabularios no uniformados entraron en la casa de los apelantes, sin dejarse a conocer como tales, y usaron fuerza física y amenazas con un revólver contra dos de los acusados precipitándose una lucha entre ellos, por lo que el Tribunal Supremo los absolvió, porque, al menos, había duda racional de que los acusados sabían o debían saber que eran agentes de la autoridad los ofendidos y bajo las circunstancias del caso los acusados tenían derecho a repeler su arresto, cuyo arresto hubiera sido una agresión ilegítima si los que lo verificaron no fueran agentes de la autoridad.

Viada, en sus Comentarios al Código Penal, Vol. 5, p. 365, cita el siguiente caso:

“*Cuestión 85.* Aun cuando el agente de la Autoridad vestido de paisano, si se da a conocer como tal agente antes de ser acometido, constituiría el hecho el delito de atentado?—El Tribunal Supremo ha resuelto la afirmativa: “Considerando que en esta responsabilidad (la del art. 262, núm. 2 del Código) se halla incurso el recurrente Nicolás Rodríguez Sánchez, que, al intervenir en la cuestión Francisco Amoros, dándose a conocer como guardia de Seguridad del distrito de Palacio, aunque vestido de paisano, le desobedeció y apuntó con una carabina: Considerando que la circunstancia de estar el Amoros vestido de paisano no le despojaba de su carácter de Agente de orden público, porque los de su clase prestan el servicio de cualquiera manera, y solo pudiera desconocerse su carácter oficial cuando el acto que ejecutaba no fuera propio de cumplimiento de sus deberes etc.” (S. de 31 de enero de 1880, Gaceta de 28 de abril.)

En el caso de autos, las pruebas son claras y positivas de que los aquí apelantes sabían o debían haber sabido que eran agentes de la autoridad los que iban a prenderles, aunque no eran uniformados, puesto que estaban armados de carabinas y pistola y el que los encabezaba, el policía Luna, había gritado a los que formaban el círculo que no corrieran, que ellos eran agentes del orden. Es asimismo clara la prueba de que en medio de aquel círculo se jugaba al “hantak”, pues antes de dar la señal de avance a sus compañeros, Luna ya había observado que se estaba jugando a los prohibidos. El hecho de que no se presentó ninguna denuncia por infracción de la ley de juego, se debió, según resulta de autos, a que no se podía presentar el *corpus delicti*, puesto que los policías de la ciudad no pudieron coger a los jugadores ni incautarse de los instrumentos del juego, que eran tres monedas de a centavo y una piedra, precisamente por el atentado de que fueron víctimas.

Es requisito esencial del delito de atentado, según jurisprudencia, que el acusado haya sabido o debió haber sabido de antemano que el ofendido era una autoridad o agente de la autoridad. La prueba en este caso debe ser de tal suerte que infunda en el ánimo del tribunal el convencimiento moral de que el acusado sabía o debió haber sabido este hecho. Cuando hay duda racional, el acusado debe ser absuelto. En el caso de un policía que verifica un arresto en cumplimiento de su deber y es objeto de atentado o resistencia, el hecho de que este no estaba vestido de su uniforme de policía no excusa al acusado, siempre que exista prueba, directa o circunstancial, por la cual se pueda concluir, fuera de toda duda racional, que el acusado sabía o debió haber sabido que aquél era un policía o agente de la autoridad.

Habiéndose, por tanto, probado que los aquí acusados-apelantes estaban en el círculo en medio del cual se jugaba al juego prohibido de "hantak" en Trading, Ciudad de Dávao, en la mañana del 13 de junio de 1947, y se resistieron a su prendimiento haciendo uso de la fuerza y violencia en las personas de los policías de la ciudad que eran agentes del orden público a quienes conocían como tales o debieron haberlo sabido porque además de portar carabinas y pistola se habían dejado de conocer como agentes de la autoridad y estos se fueron a aquel lugar y verificaron el prendimiento en cumplimiento de su deber en virtud de una orden de su jefe, fuerza es concluir que los aquí acusados-apelantes cometieron el delito de atentado a los agentes de la autoridad, según está definido y penado por el artículo 148 del Código Penal Revisado, por lo que el juez sentenciador no erró al declararles culpables y responsables de dicho delito.

En el tribunal de origen la pena impuesta a cada uno de los acusados era prisión correccional por un término de un año, como mínimo, a tres años, seis meses y veintiun días, como máximo, con las accesorias de la ley, a pagar mancomunada y solidariamente una multa de ₱500, con prisión subsidiaria en caso de insolvencia, y las costas proporcionales del juicio.

Se confirma la decisión apelada con la modificación de su sentencia, a saber: En la causa criminal No. 239, CA-G. R. No. 2347-R, los acusados Aniano Varona y Paulino Gonzáles, y en la causa criminal No. 279, CA-G. R. No. 2348-R, los acusados Aniceto Somes y Jesús Diodoco, sirvan una sentencia indeterminada, cada uno, de no más de tres (3) años, seis (6) meses y veintiun días y no menos de un año de prisión correccional con las accesorias de la ley, a pagar, cada uno, multa de ₱100, con prisión subsidiaria en caso de insolvencia, y las costas del juicio proporcionalmente.

Reyes y Gutiérrez David, MM., están conformes.

Se modifica la sentencia.

[No. 1951-R. October 30, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
ALBERTO MIRRON, accused and appellant

CRIMINAL LAW; ROBBERY; EVIDENCE; ADMISSIBILITY OF TESTIMONY OF ACCOMPLICES WHO HAVE NOT BEEN INCLUDED IN THE INFORMATION.—The fact that the prosecution used as witnesses persons who were accomplices without including them in the information and afterward asking for their exclusion, does not render their testimony inadmissible, although it is weak and usually needs corroboration. (U. S. *vs.* Enriquez, 40 Phil., 603; People *vs.* Castañeda, 63 Phil., 480)

APPEAL from a judgment of the Court of First Instance of Romblon. Solidum, J.

The facts are stated in the opinion of the court.

Marcelino Lontok for appellant.

First Assistant Solicitor-General Gianzon and *Solicitor Villamor* for appellee.

JUGO, J.:

Alberto Mirron was accused before the Court of First Instance of Romblon of the crime of robbery, and after trial he was found guilty and sentenced to suffer from two (2) years, four (4) months and one (1) day of *prisión correccional* to eight (8) years and one (1) day of *prisión mayor*, with the accessory penalties of the law, and to return the articles taken from the offended party or to indemnify him in the sum of ₱1,529.62, and to pay the costs. The defendant appealed.

Perfecto Solis testified, among other things, that on April 13, 1947, at twelve o'clock at night he slept in his house located in the municipality of Romblon, Province of Romblon. When he awoke at four o'clock the next morning he was surprised that the electric light had been put out. He rose and put on the light. Upon returning to his bed, he noticed that his trunk and suitcase had disappeared. He went to the kitchen and saw that the door had been forced open, his suitcase was empty, and the clothes which it had contained were scattered. He gathered the clothes, put them back in the suitcase and carried it inside the house. The lock of the suitcase which he had closed the night before, had been broken. The trunk previously contained ₱600 in bills, ₱300 in coins, gold jewelry worth ₱350, six dresses worth ₱16, and other articles, all of the total value of ₱1,529.62. He reported the matter to the military police and to the chief of the municipal police. About seven o'clock in the evening of that day the trunk was found by Sergeant Gregorio and Private Roa near the house of the justice of the peace.

In the afternoon of April 16 the accused was interrogated by Private Roa but he denied having committed the crime charged. The sum of ₱86.38 was found in his possession

and taken by Private Roa and delivered afterward to the proper authorities.

Vicente Solis, sixteen years old, first cousin of Perfecto Solis, who was living in the latter's house, testified that the accused met him at eleven o'clock in the evening of April 13 in a street while he was going to get back a pot from the military headquarters where he was serving food, and told him to follow the accused. He asked why, but the accused told him just to do as he was told. While they were walking they met Juan Garboso in the corner of Zaragoza and Progreso streets. The accused approached Garboso and told him to accompany them. Garboso refused at first, but as the accused became angry he followed. The three of them arrived near the house of Perfecto Solis. The accused made an opening by force in the fence of the lot of Perfecto and then forced open the door of the kitchen. He then ordered Garboso to enter the house and put out the light. As Garboso was unwilling to do it, the accused caught him by the neck and forced him to obey, telling him not to make any noise. Garboso entered the house, put out the light, and came back. The accused entered the house and after a while came out with a trunk and a suitcase, which he took to the bathroom outside the house. He forced open the suitcase, and the trunk by destroying the lock with a hunting knife. He then took ₱10 from the trunk and gave them to Vicente Solis; to Garboso he gave twenty centavos. Vicente did not tell anything to his cousin Perfecto about the robbery until after it had been discovered.

Juan Garboso, seventeen years old, testified in substance that while walking at night at about eleven o'clock he was met by the accused and Vicente Solis and was told to follow them. He did it reluctantly because of his fear. When they reached the house of Perfecto, Vicente stood guard near the street while the accused pulled out some of the stakes of the fence, broke open the door of the kitchen and told him to go inside the house and put out the light. He was unwilling to obey, but he was forced to do so by the accused. The latter entered the house and came out later with the suitcase and trunk. He forced open the trunk, took ₱10 which he gave to Vicente, and ₱0.20 to Garboso.

Garboso had been convicted by final judgment of theft of a dress of his aunt and has served the sentence.

Private Francisco Roa testified that he investigated the accused but he denied his guilt. He found ₱86.38 in the pocket of the accused, which he took and delivered to the proper authorities. He found the trunk at about two hundred yards from the house of justice of the peace Montero.

The accused denied his guilt, testifying that he was in a movie theater from seven to twelve o'clock that night, with three girl companions. The sum of ₱86.38 taken from his pocket was his own money, composed of the items specified in the motion (Exhibit 6) of the defendant for the return of said sum, as follows: ₱37, share of the accused in the sale of his copra to Kiana on April 14, 1947; ₱50, redemption money given to him by Felix Feliciano who had previously mortgaged his real property to him; ₱15, his wages as *caminero* for the first half of April, 1947, received by him from provincial cashier Jose M. Martinez, making a total of ₱102. From this sum he had spent ₱10 which he gave to his brother-in-law Gregorio Maestre on April 16, 1947, and ₱5.62 for miscellaneous expenses, as cigarettes, blow-outs to his friends, etc., amounting to ₱15.62, leaving a balance of ₱86.38.

Counsel for the defendant before the trial moved that both Vicente Solis and Juan Garboso be included in the information and excluded afterward to be used as state evidence in accordance with section 9, Rule 115. This motion was properly denied, following the doctrine of the Supreme Court in the cases of *U. S. vs. Enriquez* (40 Phil., 603) and *People vs. Castañeda* (63 Phil., 480).

While the testimony of Vicente Solis and Juan Garboso is admissible in evidence, from the circumstances of the case it has hardly any weight. If their testimony is true, they were *participes criminis*, for the reason that they took an active and necessary part in the commission of the crime; Garboso entered the house and put out the light; Vicente Solis stood guard near the street to prevent their being surprised by other people and received ₱10 taken from the trunk. It cannot be believed that they acted through fear of the accused, as it was easy for them to have run away or to have reported the matter to the police. Vicente Solis is a first cousin of Perfecto and was living in the house of the latter as a sort of boarder or helper, and he must have known where the trunk and suitcase were kept. It is a rule of evidence that the testimony of an accomplice should be corroborated on its principal points. In this case, what corroborates the testimony of Vicente? It is corroborated by that of Garboso, who is also an accomplice and a convict. The testimony of Garboso is corroborated by that of Vicente, whose character is not any better, being also an accomplice and disloyal to his cousin who was furnishing him with board and lodging. What weight can be given to the testimony of witnesses like them?

It appears of record that the church clock rang the hours. Vicente and Juan testified that the robbery occurred at eleven o'clock at night, as they heard the ringing of the

church clock, which must have been very clear at night. Perfecto Solis testified that he lay down to sleep at twelve o'clock. There could have been no mistake about the time given by Perfecto, for he himself must have heard the town clock at night and he is an intelligent man having been a petty marine officer. Consequently, if the robbery occurred at eleven o'clock at night, Perfecto Solis must have been still awake, with the trunk and the suitcase in the same room (Exhibit 1) and must have noticed the robbery.

It is true that the robbery was committed, but it must have been on a different occasion and not necessarily by the accused. Is it beyond reason to believe that the circumstances point to the two confederates Vicente Solis and Juan Garboso? It is asked what could have been the motive of Garboso and Vicente to accuse Mirron. The motive seems not hard to find, for they wanted to save themselves by pinning the guilt on another, a purpose which they have accomplished so far.

There is absolutely no evidence that the sum of P86.38 found in the pocket of the accused was part of the alleged loot. He gave a reasonable explanation of the source of said amount, which has not been contradicted by the prosecution.

There is reasonable doubt as to the guilt of the defendant.

In view of the foregoing, the judgment appealed from is reversed and the defendant is acquitted, with costs *de officio*. The sum of P86.38 above-mentioned is ordered returned to the accused. It is so ordered.

De la Rosa and Rodas, JJ., concur.

Judgment Reversed.

[No. 2719-R. October 30, 1948]

MOISES TORDILLA, protestant and appellee, *vs.* EUSTAQUIO MATOS, NEMESIO APLAY and MARTIN BETITO, protestees; EUSTAQUIO MATOS, protestee and appellant.¹

1. ELECTION LAW; PROTEST; DISMISSAL OF PROTEST; CERTIFICATE OF CANDIDACY; EFFECT OF FAILURE TO SPECIFY THEREIN MUNICIPALITY TO WHICH CANDIDATE ASPIRES AS MAYOR; SECTION 32 REVISED ELECTION CODE; CASE AT BAR.—While the protestant in the case at bar did not state specifically in his certificate of candidacy that he was a candidate for the office of municipal mayor of Tinambac, Camarines Sur, the wording of his certificate clearly shows his intention to run for the office of municipal mayor of the municipality of Tinambac of which he was then, and is, a resident, and not for the office of mayor of any other municipality of Camarines Sur, or, for that matter, for the office of mayor in any other province of the Philippines. Moreover, the fact that he has been thrice before elected municipal president of

¹ See Supreme Court resolution, G. R. No. L-2663, dated January 31, 1949. Petition is dismissed for lack of merit.

Tinambac coupled with the fact that in the last elections he received such a great number of votes from his constituents in said municipality, as to enable him to contest the election of his opponent are clear and positive indications that a considerable number of electors of Tinambac knew that the protestant was one of the candidates for the office of the mayor of Tinambac in the elections held in that municipality on November 11, 1947. It is now settled in this jurisdiction that while the provisions of section 32 of the Revised Election Code are mandatory before the election, they are considered merely directory after the voting, for the reason that a contrary interpretation would result in the disfranchisement of the voters (*De Guzman vs. Board of Canvassers*, 48 Phil., 211, citing *Luna vs. Rodriguez*, 39 Phil., 208; *Cecilio vs. Belmonte*, 51 Phil., 540). Hence, the lower court did not err in denying the motion of the protestee to dismiss the instant protest.

2. ID.; APPRECIATION OF BALLOTS; NICKNAMES, USE OF; EFFECT UPON VALIDITY OF BALLOT.—While it is true that the rule of paragraph 9 of section 149 of the Revised Election Code, which says that “the use of nicknames and appellations of affection and friendship, if accompanied by the name or surname of the candidate, does not annul such votes”, is not absolute because it has its exception “when they are used as a means to identify their respective voters,” the present trend of the decisions of the Supreme Court in cases dealing with the use of nicknames, as crystallized in the various rules of section 149 of the Revised Election Code, is to uphold as much as possible the intention of the voter and not to reject his ballot unless by so doing the law would be violated in some other respect. In the absence of clear convincing proof that the nicknames in question “were used to identify” the voters who wrote the ballots under consideration, (sec. 149, rule 9), the validity of ballots Nos. 7 and 43 should be upheld.
3. ID.; ID.; ID.; BALLOT FOUND IN RED BOX, WITH MARK “SPOILED BALLOT”; RULE.—The rule may now be considered as established in this jurisdiction that “when a ballot is found in the red box, with the mark *spoiled ballot*, it must not be counted in favor of any of the contending candidates; but if the ballots thus found does not contain the word *spoiled*, as required by the law, it is presumed that it has been placed through error in the red box and may be admitted in favor of the candidate therein voted for (*Ignacio vs. Navarro*, 57 Phil., 1000). In such case, it is incumbent upon him who maintains the contrary to prove that it has been spoiled.” (*Francisco*, The Revised Election Code, Annotated and Commented, p. 205). In the case at bar, Exhibits 5 and 6 have been properly marked as *spoiled* and deposited in the red box, because they were spoiled by the voters to whom they were given in exchange for other ballots issued to them. They are, therefore, rejected.

APPEAL from a judgment of the Court of First Instance of Camarines Sur. Surtida, J.

The facts are stated in the opinion of the court.

Ramon Diokno, *Jose W. Diokno* and *Angel Tesoro* for protestant and appellant.

De Leon & Tiuseco for protestee and appellant.

TORRES, *Pres. J.*:

In the general elections held in these Islands on November 11, 1947, four candidates were voted for the position of mayor of Tinambac, Camarines Sur, namely: Moises Tordilla, the protestant, Eustaquio Matos, Nemesio Ablay and Martin Betito, the protestees. The municipal board of canvassers certified that candidate Eustaquio Matos received 867 votes, with a majority of 165 votes over Moises Tordilla, who received 702 votes. In view thereof, the board of canvassers, on November 17, 1947, proclaimed Eustaquio Matos duly elected mayor of Tinambac, hence the protest filed with the Court of First Instance of Camarines Sur by Moises Tordilla against Eustaquio Matos and also Nemesio Ablay and Martin Betito, the last two having each received insignificant number of votes. The protest, based on an allegedly wrong appraisal and counting of ballots cast for protestant and protestee, was answered with a counter-protest whereby the protestee, Eustaquio Matos, enumerated cases of ballots listed in favor of protestant which should not have been counted in the column of votes for Moises Tordilla.

Before the hearing and before "the revision of the ballots and other documents in the counter-protested precincts", with the consent of the protestant and the approval of the court, the protestee withdrew his counter-protest. The court, after the taking of the evidence in a carefully prepared decision, and upon consideration of the merits of protest and the contentions of the parties, found that Moises Tordilla received 566 votes in the uncontested precincts and 303 votes in the contested precincts, or a total of 869 votes; while the protestee, Eustaquio Matos, received 547 votes in the uncontested precincts, and 322 votes in the contested precincts, or a total of 869 votes. The court, therefore, declared that neither the protestant nor the protestee was elected to the office of mayor of Tinambac because each of them received 869 votes, and pursuant to the law, both parties were ordered "to draw lots under the supervision of this court for the purpose of determining the right to office on a date which this court shall hereafter fix."

The protestant and the protestee appealed to this Court.

The protestee-appellant makes the following assignment of errors:

"1. In overruling protestee's motion for dismissal of protest, dated February 7, 1948;

"2. In rejecting ballots Nos. 7 and 43 in precinct No. 2, and ballot Exhibit 1 in precinct No. 3, and

"3. In not dismissing this protest."

On the other hand, the protestant likewise challenged the correctness of the judgment of the lower court on the following grounds: first, because it failed to count

in his favor ballots Nos. 17 and 50 of precinct No. 3, and ballot No. 126 of precinct No. 5; and, second, because it counted in favor of the protestee, ballots Nos. 163 and 214 of precinct No. 2, ballots Nos. 5 and 6 of precinct No. 5, and ballots Nos. 54 and 104 of precinct No. 10.

THE APPEAL OF THE PROTESTEE

Regarding the first error assigned by the protestee, it appears that the protestant Moises Tordilla, on September 11, 1947, filed a certificate of candidacy which reads as follows:

"REPUBLIC OF THE PHILIPPINES
PROVINCE OF CAMARINES SUR
MUNICIPALITY OF TINAMBAC

"The undersigned, Moises Tordilla, hereby states that he announces his candidacy for the office of Municipal Mayor in the coming election; that he is a resident of Tinambac, Camarines Sur; that he is eligible for the aforementioned office, that he belongs to the Nacionalista Party and that his address, for election purposes, is Tinambac, Camarines Sur.

"In witnesswhereof, I hereby sign these presents at Tinambac, Camarines Sur, on the 11th day of September, 1947.

"(Sgd.) MOISES TORDILLA"

It is argued by the protestee that the above-quoted certificate of candidacy filed by the protestant does not comply with the requirements of section 32 of Republic Act No. 180, otherwise known as the Revised Election Code, because of the failure of the person filing the same to state for what position he had filed his certificate of candidacy. In other words, according to the view of the protestee, Moises Tordilla, in announcing his candidacy for the office of municipal mayor, did not express the name of the particular municipality of which he expected to become a mayor.

While Moises Tordilla did not state specifically in his certificate that he was a candidate for the office of municipal mayor of Tinambac, the wording of his certificate quoted above clearly shows his intention to run for the office of municipal mayor of the municipality of which he was then, and is, a resident, and not for the office of mayor of any other municipality of Camarines Sur, or, for that matter, for the office of mayor in any other province of the Philippines. Moreover, the fact that he has been thrice before elected municipal president of Tinambac (t. s. n. p. 24), coupled with the fact that in the last elections he received such a great number of votes from his constituents in said municipality, as to enable him to contest the election of his opponent Eustaquio Matos, are clear and positive indications that a considerable number of electors of Tinambac knew that the protestant was one of the candidates for the office of mayor of

Tinambac in the elections held in that municipality on November 11, 1947.

It is now settled in this jurisdiction that while the provisions of section 32 of the Revised Election Code are mandatory before the election, they are considered merely directory after the voting, for the reason that a contrary interpretation would result in the disfranchisement of the voters (*De Guzman vs. Board of Canvassers*, 48 Phil., 211; citing *Luna vs. Rodriguez*, 39 Phil., 208). In *Cecilio vs. Belmonte*, the protestee did not file his certificate of candidacy during the time prescribe by law, but the Supreme Court held that after the voting the will of the electorate shall not be frustrated on the technical ground that the certificate of candidacy has not been presented (51 Phil., 540). It appears, therefore, that the lower court did not err in denying the motion of the protestee to dismiss this protest.

The second error assigned by the protestee makes reference to ballots Nos. 7 and 43 of the second precinct and Exhibit "1" of the third precinct, which, according to the protestee-appellant, were wrongly rejected by the lower court.

Precinct No. 2, Ballots Nos. 7 and 43.—The protestee and appellant, in claiming these ballots, argues that the words written after the names of certain candidates, such as "Ambac" after the name of the protestee, "Y. M. C. A." after the name of the first councilor, in ballot No. 7; the words "Palotes" after the name of the protestee, "Spor" after the name of the candidate for vice-mayor, and the words "Tri, "Botog", "Lopos" and "Paroy" after the names of the persons voted for first, second, third and fifth councilors, respectively, in ballot No. 43, are nicknames of the candidates after whose names they are written on the ballot.

The protestant contends that these two ballots are marked ballots, and the lower court, considering that the candidates voted in those two ballots are already fully identified therein by their names and surnames, ruled that the use of the alleged nicknames is unnecessary, because it "has the effect of identifying the voter," and therefore rejected them.

While it is true that the rule of paragraph 9 of section 149 of the Revised Election Code, which says that "the use of nicknames and appellations of affection and friendship, if accompanied by the name or surname of the candidate, does not annul such vote", is not absolute because it has its exception "when they are used as a means to identify their respective voters", the present trend of the decisions of the Supreme Court in cases dealing with the use of nicknames, as crystalized in the various rules of section 149 of the Revised Election Code, is to

uphold as much as possible the intention of the voter and not to reject his ballot, unless by so doing the law would be violated in some other respect. In the absence of clear convincing proof that the nicknames in question "were used to identify" the voters who wrote the ballots under consideration, (sec. 149, rule 9), We reverse the action of the lower court and hold the validity of ballots Nos. 7 and 43.

Ballot, Exhibit 1.—This ballot, with the coupon number 874 still attached thereto, on which only the name "M. Matos" is written on the space reserved for the office of mayor, and the letter "m" written opposite the space for the office of vice-mayor, is marked *spoiled* by the inspectors, and has been placed in a box for spoiled ballots, is now claimed by the protestee as his valid ballot that has been misplaced in the red box, and should, therefore, be counted in his favor.

Section 137 of the Revised Election Code, which provides for the procedure for the *casting of vote*, in its last part says that "any ballot whose detachable coupon has not been removed in the presence of the board and of the voter or whose number does not coincide with the number of the ballot delivered to the voter, as entered in the registry list, shall be considered spoiled and shall be so marked and signed by the inspectors." It is true that this provision, considered in connection with rule 22 of section 149 of the same Code, has been construed liberally in the sense that the failure of election inspectors to comply with their duty should not prejudice the voter to the extent of annulling his vote by branding and marking his ballot as spoiled. On the other hand, section 147 of the Code says that "The ballots deposited in the red box shall be presumed to be spoiled ballots, whether or not they contain such notation * * *"; and the evidence taken at the hearing of this protest leads us to believe that Exhibit 1 has been deposited in the red box as spoiled ballot with deliberation. Eleuterio Mendoza, chairman of the board of inspectors of precinct No. 3, in an effort to vary by parol evidence what really appears in the exhibit, said that the disposition of this ballot was discussed by the board of inspectors and he and another inspector who belong to the majority party, yielding to the opinion of the minority inspector, deposited Exhibit 1 marked as "spoiled" in the red box.

Considering that this witness with the other majority inspector had control over the proceedings of the board, we cannot believe that they merely yielded to the wishes of the "nacionalista" inspector, and in order to avoid further trouble, after having marked the ballot as spoiled, consented to deposit it in the box for spoiled ballots. Our examination of the evidence shows that Exhibit 1 was

issued to voter Eusebio Serrano who later on asked that he be given another ballot. Ballot No. 882 was then issued to him in exchange for ballot No. 874. Inasmuch as said voter was issued two ballots, number 874 marked by the inspectors as *spoiled*, and then number 882, the admission of Exhibit 1 as valid ballot for the protestee would mean that Eusebio Serrano has voted twice in that election for local offices.

We quote with approval the following passage of the decision of the lower court:

"* * * It has been established that this ballot (Exhibit 1) was issued to Eusebio Serrano who asked that it be changed by another ballot. In substitution, the Board gave him ballot No. 882. This is clearly shown by the entries in the List of Voters, Exhibit 4, where it appears (page S, Order No. 221) that Eusebio Serrano received three ballots, namely: No. 874 for National Offices, No. 874 for Local Offices and No. 882 for Local Offices, with a notation under the column 'Remarks' which reads: '874, local spoiled'. The same entry appears on the List of Voters Exhibit 2, although in this exhibit the number '882' in the column 'No. of Ballots' and the number '874' and the words 'local spoiled' under the column 'Remarks' were erased, but the erased number and words are still clear and visible. This is further corroborated by the entry under the column 'Remarks' in the List of Voters Exhibit 3, which reads as follows: '874, local spoiled.' Moreover, it appears also on page 4 of C. E. Form No. 3, Exhibit A, that the ballot with coupon No. 874 issued to Eusebio Serrano was spoiled and, in its place, ballot 882 was returned and deposited in the white box. Furthermore, it appears in the election return, Exhibit D, that no 'valid ballots withdrawn from box of spoiled ballots' has 'been mistakenly placed therein'. All these facts show unmistakably that the ballot Exhibit 1 was really a spoiled ballot and accordingly should not be counted for the protestee."

We, therefore, find that the lower court did not commit the errors assigned by the protestee.

THE APPEAL OF THE PROTESTANT

The first assignment of error of the protestant refers to ballots Nos. 17 and 50 of precinct No. 3, and ballot No. 126 of precinct No. 5, which he contends should have been counted in his favor.

Precinct No. 3: Ballots Nos. 17 and 50.—Ballot No. 17 shows that only one candidate was voted by the elector to whom said ballot was issued. He wrote "M. Tylda" on the space corresponding to the position of mayor. The lower Court opined that the surname reads "Tylda," and the protestant contends that the name written should be read "Tolda." Whether it should be read "Tylda" or "Tolda", under the principle of *idem sonans*, as applied in Rule 2 of section 149 of the Revised Election Code, and in the light of the doctrines laid down by our Supreme Court in numerous cases dealing with the same question, and adopting a liberal attitude such as that taken by the Supreme Court in interpreting the meaning of words written by ignorant voters—persons who have been trained to write

certain names for the sole purpose of enabling them to cast their votes—we are inclined to, and do hereby, hold that the ballot in question has been cast for the protestant, Moises Tordilla (*Balon vs. Moreno*, 57 Phil., 60). At any rate, the name of no other candidate has been written on that ballot, and the name M. Tylda, or Tolda, has been written on the space opposite the office of mayor, and the letters in Tylda or Tolda correspond to the consonants constituting the surname Tordilla. Should we reject said ballot, we would be, therefore, defrauding the intent of the voter.

The same reasoning is applied to ballot No. 50. "M. td" appears written opposite the office of mayor. Under the doctrine laid down in *Sarenas vs. Generoso* (65 Phil., 549), inasmuch as the initial M is the abbreviation of the Christian name of the protestant and the letters td are some of the consonants constituting the surname of the protestant, we believe that the voter intended to cast his vote for the protestant, and, therefore, this ballot should be, and it is hereby, counted in favor of the protestant appellee.

Precinct No. 5, Ballot No. 126.—We have scanned in vain the record in an effort to locate ballot No. 126 of precinct No. 5, as it is referred to in the decision of the lower court and in the brief of the appellant, wherein the nickname maqui cuarta is mentioned. Inside an envelope, on the face of which is written in ink One ballot 126 White Box Precinct No. 5, we found a ballot on which M. tordella is written on the space corresponding to the office of mayor, and J. Abiog written on the space opposite the office of vice-mayor. On the face of the said ballot, it is undisputable that by writing M. tordella on the space assigned for the office of mayor, the voter intended to, and cast his, vote for the protestant.

In this second assignment of error, the protestant likewise challenges the findings of the lower court in counting in favor of the protestee ballots Nos. 163 and 214 of precinct No. 2, ballots Nos. 5 and 6 of precinct No. 5, and ballots Nos. 54 and 104 of precinct No. 10.

Precinct No. 2, Ballots Nos. 163 and 214.—The protestant claims that ballot No. 163 should have been rejected because it is marked by the voter when he used two kinds of letters when he wrote the names of the candidates voted by him. It appears that while the names of all the candidates are written in ordinary writing, the person voted for vice-mayor has been written with letters similar to printed type. The point raised herein is covered by rule 18 of section 149 of the Revised Election Code, which reads:

"18. Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, commas, dots, lines or hyphens between the name and surname of a candidate, or in other parts of the ballot, traces of the letters t, j, and other

similar ones, the first letters or syllables of names which the voter does not continue, the use of two or more kinds of writing, and unintentional or accidental flourishes, strokes, or stains, shall be considered innocent and shall not invalidate the ballot." (See also *Yalung vs. Atienza*, 52 Phil., 781; *Villavert vs. Lim*, 62 Phil., 178)

This ballot is, therefore, admitted.

Regarding ballot No. 214 of the same precinct, it appears that the word "Imalos" is written on the space opposite the office of mayor, and on the space opposite the office of vice-mayor the voter wrote E. Mato. The protestant contends that this ballot should have been rejected because it shows that the protestee appears voted for the position of vice-mayor. The lower court, taking into consideration, however, that the word 'Imalos' appears on the space opposite the position of mayor and that said word is *idem sonams* of the name of the protestee, counted the ballot in favor of the latter. Rule No. 3 of section 149 of the Revised Election Code, may be applied to the case under consideration, since we consider the word "Imalos" as *idem sonams* of Matos. It reads:

"3. When the name of a candidate appears on two spaces of the ballot, it shall be counted in favor of the candidate for the office with respect to which he is a candidate. The vote for the office for which he is not a candidate shall be counted as stray."

Precinct No. 5, Ballots Nos. 5 and 6.—These two ballots are exhibited in this protest with their coupons Nos. 1410 and 1518 unremoved. On ballot Exhibit 5, the name Eustaquio Matos is written on the space opposite the position of mayor, and on Exhibit 62 E. Matos is written on the same space. Both are marked *spoiled* and have been found in the box for spoiled ballots by the election inspectors. Notwithstanding this circumstance, the protestee claimed that those ballots should be counted in his favor on the ground that they are erroneously placed in that box. The lower court, after examining the evidence, came to the conclusion that Exhibits 5 and 6 are valid ballots for the protestee and, therefore, adjudicated the same to him.

The protestant appellant relying on certain decisions rendered by the Supreme Court on this matter, insists that those exhibits are not valid votes for the protestee. In *Lucero vs. de Guzman*, 45 Phil. 852, the Supreme Court, ruling on the presumption established by section 147 of the Revised Election Code, regarding spoiled ballots deposited in the red box, ruled that "no ballot placed by the election officers in the box for spoiled ballots should ever be counted, whether unexceptionable in form or not, unless proof is supplied that such ballot was placed in the box for spoiled ballots by mere mistake; and the appearance of the ballot itself cannot be accepted as supplying the necessary proof upon this point."

Later on, the doctrine laid down in said case and in other subsequent cases was modified in *Ignacio vs. Na-*

varro (57 Phil., 1000), wherein the Supreme Court said that the rule may now be considered as established in this jurisdiction that "when a ballot is found in the red box, with the mark *Spoiled Ballot*, it must not be counted in favor of any of the contending candidates; but if the ballot thus found does not contain the word *Spoiled*, as required by the law, "it is presumed that it has been placed through error in the red box and may be admitted in favor of the candidate therein voted for. In such case, it is incumbent upon him who maintains the contrary to prove that it has been spoiled." (Francisco, *The Revised Election Code, Annotated and Commented*, p. 205).

In the case at bar, the protestee failed to prove in a convincing manner why those two ballots, Exhibits 5 and 6, with their coupons still unremoved and marked *Spoiled*, have been deposited and found in the red box. An attempt was made by the protestee, through the testimony of Valente Agsalde, chairman of the board of inspectors of precinct No. 5, to explain that two of the ballots found in the red box were deposited therein during the counting of the votes upon protest made by the minority inspector, who contended that they are inadmissible. This witness, however, not only failed to mention the particular ballot that has been so disposed by the board, but also failed to specify that the two ballots that have been so placed in the red box were Exhibits 5 and 6.

So much for the law and jurisprudence governing the admissibility of Exhibits 5 and 6. We shall now turn our attention to certain facts which the record reveals and which, in our opinion, further justify our stand in rejecting those two ballots. It appears that the board of inspectors marked Exhibit 5 with the word *spoiled* on the back thereof because the voter to whom it was issued, after having written a certain name on the space corresponding to the first member of the provincial board, repeatedly crossed the same and then wrote on the same space A. Prila; while on Exhibit 6 the elector wrote the word "Liberal" on the space for governor, instead of the name of his candidate for that office.

In the face of the above facts, it is reasonable to believe that the board of inspectors properly marked both ballots (Exhibits 5 and 6) as *spoiled* and, without removing the respective coupons Nos. 1410 and 1518, deposited them in the red box.

In view of the fact that both exhibits still have their corresponding coupons, it is now possible for us to trace the voters to whom said coupons were issued, in order to determine whether or not, after having been marked *spoiled* and deposited in the red box, the corresponding electors were each issued another ballot; and, moreover, whether out of the six spoiled ballots found in the red box, Exhib-

its 5 and 6 were good ballots which were deposited therein by mistake.

The trial court maintained that in precinct No. 5, 184 voters cast their votes and the two ballots in question are included in that number. On the other hand, the protestant appellee contends that, according to the election documents (Exhibit B), only 182 voters cast their votes.

This difference of two votes is explained by the fact that although the names of Haide Estrella, voter No. 51, page E of Exhibit 7, and of Eugenio Una Santos, voter 173, page S of Exhibit 7, are not included in the certificate of unused official ballots and in the list of electors who voted (pp. 24 of Commission on Elections Form No. 3 [Exhibit B], yet there are numbers, thumbmarks and signatures appearing after their names on the list of voters (Exhibit 7) which cast strong doubt that they really voted as it is made to appear. On the other hand, if the non-inclusion of their names is correct; if those two voters had not really voted on election day; if their purported thumbmarks and signatures appearing on Exhibit 7 had been affixed in the corresponding places after the election, it is very clear that the finding of the lower court in regard to Exhibits 5 and 6 is absolutely without basis.

By going behind the documentary evidence before us, we have reached the conclusion that neither Haide Estrella nor Eugenio Una Santos have cast their votes in the election held in the municipality of Tinambac, Camarines Sur, on November 11, 1947, and that the figures, thumbmarks and signatures appearing after the names of Haide Estrella (line 51) and Eugenio Una Santos (line 173) were fraudulently and illegally inserted therein after the day of the election. Our conclusion is based on the following:

(a) The freshness and color of the ink, the type and width of the writing instrument used in the entries in those two lines as compared with those used in the other entries, in Exhibit 7 is very noticeable. In the other entries, the ink used was black and the pen was a fine-pointed one. In these two lines—51 and 173—however, the ink used was of a bluish hue and the pen was of a wide point; the signature of Juan R. Prades, the poll clerk, appearing on those two lines is very different from his other signatures in the other lines of Exhibit 7. Juan R. Prades signed his name more than 180 times, but the difference between the signatures Juan R. Prades appearing on line 51 and that on line 173 and those appearing in the other 182 entries of Exhibit 7, is so striking that it does not take a handwriting expert to conclude that it was not Juan R. Prades who wrote those two signatures in said lines 51 and 173.

(b) With regard to the coupon numbers of the ballots issued to Haide Estrella (line 51 of Exhibit 7), the numbers 1421, 1421 appear within therein, which means that

ballot No. 1421 for national offices and ballot No. 1421 for provincial and local offices were issued to the voter. We cannot believe that this female elector had been issued one ballot for national offices and another ballot for provincial and local offices, both bearing the same number, because before she was given her ballots, Eraquio Manquilat (line 99, page M. of Exhibit 7) had received ballots Nos. 1412, 1412, had spoiled ballot No. 1412 for local offices and received 1416 in exchange. Since no ballot for national offices had been spoiled, if Haide Estrella received yellow ballot No. 1421, she would have received white ballot No. 1422. Furthermore, if Haide Estrella had not received ballot No. 1421 for national offices because that ballot was given to Teodora Abuque (line 16, page 1, Exhibit B), nor ballot No. 1421 for local offices, because this particular ballot was issued to, and used by, Jose Tadeo (line 191, page 4, Exhibit B), it is very clear that a falsity has been committed in the premises.

(c) With respect to Eugenio Una Santos, we likewise find that it was impossible for him to have been issued one ballot for national offices and another ballot for provincial and municipal offices both bearing the same number, 1541, as the entry shows on line 173, page S of Exhibit 7. It appears that before he cast his vote more white ballots had been spoiled than yellow ballots and, therefore, it was physically impossible for him to receive one white ballot and another yellow ballot, both bearing the same number.

Our examination of the documentary evidence before us further shows that ballot No. 1541 for national offices could not have been issued to this particular elector in view of the fact that this ballot No. 1541 was issued to Pedro Quinto (line 157, page Q of Exhibit 7); neither white ballot No. 1541 for provincial and local offices could have been given to the same elector—Eugenio Una Santos—because that ballot was issued to Alfredo Abrera (line 3 of Exhibit B.) In this connection, we note that while at first glance No. 1541 does not appear opposite the name of Alfredo Abrera (line 3, page A of Exhibit 7), a closer inspection shows that something was originally written in the proper space under the column of "Number of Ballots Delivered to Voter" and subsequently erased, so that, by providing a wider distance between the two numbers of the ballots given the elector, the numbers 1537 and 1538 have been written over the erasure.

(d) In Exhibit B, which is a certificate of the number of unused official ballots and a list of voters who voted, it appears that ballot for local offices No. 1518, which is Exhibit 6 before us, was given to elector Jose Bea and said ballot is listed in Exhibit B, page 2, as having been spoiled, for which reason ballot No. 1526 for local offices was issued

to him (Exhibit B, page 2, line 31; line 31, page B, Exhibit 7).

Basing, therefore, our attitude on the foregoing findings and reasons, we are strongly of the opinion that Exhibits 5 and 6 have been properly marked as *spoiled* and deposited in the red box, because they were spoiled by the voters to whom they were given in exchange for other ballots issued to them. They are, therefore, rejected.

Precinct No. 10, Ballots Nos. 54 and 104.—These ballots are objected by the protestant on the ground that they are marked ballots, because the words Ma. Ma appear on the fifth space for councilor in ballot No. 54, and the word Matos, which correponds to the family name of the protestee, is written on the space opposite the office of mayor in ballot No. 104 with a lettering different from that used by the elector in writing the names of other candidates in the same ballot. Upon careful examination of these two ballots, we do not find that such defects as are alleged by the protestant are of any consequence. We do not find sufficient reason based on the evidence that would support his view. Concurring, therefore, with the lower court, we refrain from rejecting the same.

CONCLUSION

As stated in the beginning of this decision, the lower court held that the protestant as well as the protestee have each received 869 votes.

According to our findings, we have held the validity of ballots Nos. 7 and 43 of the protestee, but have rejected Exhibits 5 and 6 which the lower court adjudicated to him. This result does not affect the total of 869 votes credited by the lower court to the protestee.

As regards the protestant, we have adjudicated in his favor ballots Nos. 17 and 50 of precinct No. 3 and ballot No. 126 of precinct No. 5. These three ballots added to the 869 votes adjudicated to him by the lower court give a total of 872 votes. It results therefore, that the protestant received a majority of 3 votes over those accounted for the protestee.

In view of all the foregoing, we hereby reverse the judgment of the lower court and order that another one be entered in the record of this case whereby the protestant is declared elected mayor of the municipality of Tinambac, Camarines Sur, with a majority of 3 votes over the protestee, because he received eight hundred seventy-two (872) votes as against eight hundred sixty-nine (869) votes of the protestee. The protestee shall pay the expenses and costs of the protest. So ordered.

Endencia and Felix, JJ., concur.

Judgment reversed and the protestant declared elected.